

Supreme Court, U. S.  
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IN THE

**SUPREME COURT OF THE UNITED STATES**

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October Term, 1978

No.

**78-827**

**HELEN BALL, INDIVIDUALLY AND ON BEHALF  
OF ALL OTHERS SIMILARLY SITUATED,  
*Petitioner,***

vs.

**COUNTY OF LOS ANGELES,  
*Respondent.***

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**Petition For Writ Of Certiorari To The  
Supreme Court Of The State Of California**

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## SUBJECT INDEX

|   | Page |
|---|------|
| Opinions Below.....   | 2    |
| Jurisdiction .....  | 2    |
| Questions Presented.....  | 2    |
| Constitutional Provisions and Statutes Involved.....  | 3    |
| Statement of the Case.....  | 7    |
| A. Statement of Substantive Facts.....  | 7    |
| B. Statement of Procedural Facts.....   | 9    |
| Reasons for Granting the Writ.....  | 10   |
| A. Ball Denied Equal Protection Of Law By<br>Discriminatory And Arbitrary Legislation<br>For Payment Of Interest On Tax Refunds... .  | 10   |
| B. California Revenue And Taxation Code As<br>Presently Constituted Is Discriminatory And<br>Arbitrary In Its Policy Of Payment Of In-<br>terest On Overpayments And Refunds Of<br>Taxes..... | 14   |
| C. The Supreme Court And Lower Federal<br>Courts Have Already Affirmed The Proposi-<br>tion That Citizens Are Entitled To Recovery<br>Of Interest In Connection With A Refund Of<br>Tax ..... | 16   |
| Conclusion.....   | 24   |

## APPENDIX INDEX

|   | Page |
|---|------|
| <b>Appendix A.</b>  |      |
| Minute Order, Supreme Court Of The State<br>Of California, dated August 24, 1978.....   | 1    |
| <b>Appendix B.</b>  |      |
| Ball v County of Los Angeles, 82 Cal. App.<br>3d 312, Court of Appeals, 2d District, dated<br>June 29, 1978.....  | 2    |
| <b>Appendix C.</b>  |      |
| Order Dismissing Complaint and Entry of<br>Summary Judgment in Favor of Defendant<br>and Against Plaintiff, dated February 3,<br>1978, of the Superior Court of the State of<br>California for the County of Los Angeles... . | 15   |
| <b>Appendix D.</b>  |      |
| Reporter's Transcript on Appeal.....  | 17   |
| <b>Appendix E.</b>  |      |
| Appellant's Opening Brief to Court of Ap-<br>peals .....  | 26   |
| <b>Appendix F.</b>  |      |
| Petition for Hearing In The Supreme Court<br>of the State of California.....  | 49   |
| <b>Appendix G.</b>  |      |
| Text of Pertinent Sections of California<br>Revenue and Taxation Code.....  | 70   |
| <b>Appendix H.</b>  |      |
| Lease Between Helen Ball, Lessor and City<br>of Los Angeles, Lessee.....  | 95   |

## TABLE OF AUTHORITIES CITED

|  | Cases      | Page |
|--|------------|------|
| Airway Electric Appliance Corp. v. Day (1924), 266<br>U.S. 71, 69 L.Ed. 169, 45 Sup. Ct. Rep.....                  | 12         |      |
| Ball v. County of Los Angeles (1978), 82 Cal. App.<br>3d 312.....  | 2, 7-8, 10 |      |
| Barbier v. Connolley (1885), 113 U.S. 27, 28 L.Ed.<br>923, 5 S. Ct. 251.....                                       | 12         |      |
| Billings v. United States (1914), 232 U.S. 261, 34<br>L.Ed. 596, 34 S. Ct. 421.....                                | 17         |      |
| Boott Cotton Mills v. City of Lowell (1893), 159<br>Mass. 383, 34 N.E. 367.....                                    | 24         |      |
| Bryam v. Thruston County (1926), 141 Wash. 28,<br>251 P. 103; 141 Wash. 28, 252 P. 943 (1927 re-<br>argument)..... | 20-21      |      |
| Chicago and Northwestern Ry. v. Schmidt (1970),<br>85 S.D. 223, 180 N.W. 2d 233.....                               | 23         |      |
| Chicago St. P. M. & O. Ry. v. Mundt (1930), 56<br>S.D. 530, 229 N.W. 394.....                                      | 22-23      |      |
| Cities Service Oil Co. v. City of Pittsburg (1972),<br>449 Pa. 481, 297 A. 2d 466.....                             | 19         |      |
| Department of Mental Hygiene v. McGilvrey<br>(1958), 50 Cal. 2d 742, 329 P. 2d 689.....                            | 3          |      |
| Doric Co. v. King County (1962), 59 Wash. 2d 741,<br>370 P. 2d 254.....  | 21         |      |
| Eisenstadt v. Baird (1972), 405 U.S. 438, 31 L.Ed.<br>2d 349, 92 S. Ct. 1092.....                                  | 12, 16     |      |
| Erskine v. Van Arsdale (1872), 15 Wall. (U.S.), 75,<br>21 L.Ed. 63.....  | 17, 24     |      |

TABLE OF AUTHORITIES CITED (Continued)

| Cases  | Page   |
|--|--------|
| Ford Motor Co. v. City of Detroit (1973), 43 Mich.<br>App. 248, 204 N.W. 2d 348.....   | 22     |
| Great Northern Railway Co. v. Stevens County<br>(1919), 108 Wash. 238, 183 P. 65.....  | 21     |
| Green v. State of California (1887), 73 C. 29.....   | 13, 14 |
| Gulf, C. & S. F. R. Co. v. Ellis (1896), 165 U.S. 150,<br>41 L.Ed. 666, 17 Sup. Ct. Rep. 255.....  | 12     |
| Haiku Sugar Co. v. Johnstone (1918), 249 Fed. 103,<br>161 C.C.A. 155.....  | 17     |
| International Paper Co. v. Burrill (1919), 260 Fed.<br>664 (D.C.).....   | 17     |
| Kentucky R. Tax Cases (1885), 115 U.S. 321, 29<br>L.Ed. 414, 6 Sup. Ct. Rep. 57.....   | 11     |
| Ketchikan Spruce Mills v. Kewey (1957), 17 Alaska<br>336.....  | 18     |
| Lelande v. Lowery (1945), 26 Cal. 2d 224, 157 P. 2d<br>639.....  | 3      |
| Lindsley v. Natural Carbonic Gas Co. (1911), 220<br>U.S. 61, 55 L.Ed. 369, 31 S. Ct. 337.....  | 12-13  |
| Los Angeles v. Southern Cal. Tel. Co. (1948), 32<br>Cal. 2d 378, 196 P. 2d 773; appeal dismissed, 336<br>U.S. 929, 93 L.Ed. 1090, 69 S. Ct. 737..... | 3-4    |
| Louisville Gas & Electric Co. v. Coleman (1928),<br>277 U.S. 32, 72 L.Ed. 770, 48 S. Ct. 423.....  | 11, 13 |
| Magoun v. Illinois Trust & Sav. Bank (1897), 170<br>U.S. 283, 42 L.Ed. 1037, 18 Sup. Ct. Rep. 594...   | 11     |
| McDonald v. Board of Election Commissioners<br>(1969), 394 U.S. 802, 22 L.Ed. 2d 739, 89 S. Ct.<br>1404.....   | 13     |

TABLE OF AUTHORITIES CITED (Continued)

| Cases   | Page   |
|---|--------|
| Metropolitan Life Insurance Co. v. State (1924), 194<br>Ind. 657, 144 N.E. 420.....   | 24     |
| Mullaney v. Hess (1951), 189 F. 2d 417 (9th Cir.)...  | 18     |
| National Home v. Parrish (1913), 229 U.S. 494, 57<br>L.Ed. 1296, 33 S. Ct. 944.....   | 17     |
| People v. England (1934), 140 Cal. App. 310, 35 P.<br>2d 565.....   | 3      |
| People v. Stevens (1877), 71 N.Y. 527.....  | 14     |
| People v. Sullivan (1943), 60 Cal. App. 2d 539, 114<br>P. 2d 230.....   | 3      |
| Philadelphia and Reading Coal and Iron Co. v.<br>School District of Borough of Tamaqua (1931),<br>304 Pa. 489, 156 A. 75..... | 18, 19 |
| Proctor & Gamble Distributing Co. v. Sherman<br>(1924), 2 F. 2d 165 (D.C.N.Y.).....   | 17     |
| Railway Express Agency v. New York (1949), 336<br>U.S. 106, 93 L.Ed. 553, 31 S. Ct. 463.....                                  | 13     |
| Redfield v. Bartels (1891), 139 U.S. 694, 35 L.Ed.<br>310, 11 S. Ct. 683.....   | 17     |
| Reed v. Reed (1971), 404 U.S. 71, 30 L.Ed. 2d 225,<br>92 S. Ct. 251.....  | 12, 16 |
| Re Railroad Tax Cases (1882), 8 Sawy. 238, 13 Fed.<br>722.....  | 11     |
| Royster Gauna Co. v. Virginia (1920), 253 U.S. 412,<br>64 L.Ed. 989, 40 Sup. Ct. Rep. 560.....                                | 12, 13 |
| San Bernardino v. Way (1941), 18 Cal. 2d 647, 117<br>P. 2d 354.....   | 3      |
| Santa Clara County v. Southern P. R. Co. (1883), 9<br>Sawy. 165, 18 Fed. 385.....   | 11     |

TABLE OF AUTHORITIES CITED (Continued)

| Cases  | Page   |
|--|--------|
| Schlesinger v. Wisconsin (1925), 270 U.S. 230, 70 L.Ed. 557, 46 Sup. Ct. Rep. 260.....   | 12     |
| State, etc., Co. v. Davis (1915), 228 Fed. 246 (D.C.)  | 17     |
| State Tax Commission v. United Verde Extension Mining Co. (1931), 39 Ariz. 136, 4 P. 2d 395; 39 Ariz. 331, 6 P. 2d 889 (1931 reh. denied)..... | 21-22  |
| Williams v. Harvey (1931), 91 Mont. 168, 6 P. 2d 418.....  | 22     |
| Zimmerman v. Corson County (1917), 39 S.D. 167, 163 N.W. 771.....  | 22, 23 |

---

Miscellaneous

|                                  |    |
|----------------------------------|----|
| 57 A.L.R. 357.....               | 16 |
| 76 A.L.R. 1012.....              | 16 |
| 112 A.L.R. 1183.....             | 17 |
| 11 Cal. Jur. 2d Section 272..... | 3  |

---

Statutes

|  |       |
|--|-------|
| Calif. Civil Code Section 1915.....                    | 4, 14 |
| Calif. Rev. & Tax. Code Section 202(b) (Now 202(a)(2)) | 7     |
| Calif. Rev. & Tax. Code Section 2617.....              | 14    |
| Calif. Rev. & Tax. Code Section 2618.....              | 14    |
| Calif. Rev. & Tax. Code Section 2704.....              | 14    |
| Calif. Rev. & Tax. Code Section 2705.....              | 14    |

TABLE OF AUTHORITIES CITED (Continued)

| Statutes                                    | Page  |
|---|-------|
| Calif. Rev. & Tax. Code Section 2759.....   | 14    |
| Calif. Rev. & Tax. Code Section 2760.....   | 14    |
| Calif. Rev. & Tax. Code Section 2761.....   | 14    |
| Calif. Rev. & Tax. Code Section 2762.....   | 14    |
| Calif. Rev. & Tax. Code Section 2922.....   | 14    |
| Calif. Rev. & Tax. Code Section 2922.5..... | 14    |
| Calif. Rev. & Tax. Code Section 5096.....   | 10    |
| Calif. Rev. & Tax. Code Section 5097.....   | 10    |
| Calif. Rev. & Tax. Code Section 5099.....   | 10    |
| Calif. Rev. & Tax. Code Section 5101.....   | 10    |
| Calif. Rev. & Tax. Code Section 5103.....   | 10    |
| Calif. Rev. & Tax. Code Section 5104.....   | 4, 10 |
| Calif. Rev. & Tax. Code Section 5105.....   | 4, 10 |
| Calif. Rev. & Tax. Code Section 5105.5..... | 4, 10 |
| Calif. Rev. & Tax. Code Section 5106.....   | 4     |
| Calif. Rev. & Tax. Code Section 5107.....   | 4, 9  |
| Calif. Rev. & Tax. Code Section 5108.....   | 4     |
| Calif. Rev. & Tax. Code Section 5141.....   | 4, 10 |
| Calif. Rev. & Tax. Code Section 5141.5..... | 4     |
| Calif. Rev. & Tax. Code Section 5142.....   | 4, 10 |
| Calif. Rev. & Tax. Code Section 5143.....   | 4, 9  |
| Calif. Rev. & Tax. Code Section 5150.....   | 4, 10 |
| Calif. Rev. & Tax. Code Section 5151.....   | 4     |
| Calif. Rev. & Tax. Code Section 6907.....   | 4     |
| Calif. Rev. & Tax. Code Section 6936.....   | 4     |
| Calif. Rev. & Tax. Code Section 8130.....   | 4     |
| Calif. Rev. & Tax. Code Section 8151.....   | 4     |
| Calif. Rev. & Tax. Code Section 9155.....   | 5     |
| Calif. Rev. & Tax. Code Section 9174.....   | 5     |
| Calif. Rev. & Tax. Code Section 10901.....  | 5     |
| Calif. Rev. & Tax. Code Section 11555.....  | 5     |
| Calif. Rev. & Tax. Code Section 11576.....  | 5     |

**TABLE OF AUTHORITIES CITED (Continued)**

| Statutes                                      | Page |
|---|------|
| Calif. Rev. & Tax. Code Section 11934.....    | 5    |
| Calif. Rev. & Tax. Code Section 12983.....    | 5    |
| Calif. Rev. & Tax. Code Section 13107.....    | 5    |
| Calif. Rev. & Tax. Code Section 14374.....    | 5    |
| Calif. Rev. & Tax. Code Section 14375.....    | 5    |
| Calif. Rev. & Tax. Code Section 16271.....    | 5    |
| Calif. Rev. & Tax. Code Section 16272.....    | 5    |
| Calif. Rev. & Tax. Code Section 19062.....    | 5    |
| Calif. Rev. & Tax. Code Section 19062.11..... | 5    |
| Calif. Rev. & Tax. Code Section 19091.....    | 5    |
| Calif. Rev. & Tax. Code Section 26080.....    | 6    |
| Calif. Rev. & Tax. Code Section 26081.....    | 6    |
| Calif. Rev. & Tax. Code Section 26107.....    | 6    |
| Calif. Rev. & Tax. Code Section 30366.....    | 6    |
| Calif. Rev. & Tax. Code Section 30406.....    | 6    |
| Calif. Rev. & Tax. Code Section 32405.....    | 6    |
| Calif. Rev. & Tax. Code Section 32417.....    | 6    |
| Calif. Rev. & Tax. Code Section 38606.....    | 6    |
| Calif. Rev. & Tax. Code Section 38616.....    | 6    |
| Calif. Rev. & Tax. Code Section 39202.....    | 6    |
| Calif. Rev. & Tax. Code Section 40116.....    | 6    |
| Calif. Rev. & Tax. Code Section 40130.....    | 6    |
| Calif. Rev. & Tax. Code Section 41105.....    | 7    |
| Calif. Rev. & Tax. Code Section 41113.....    | 7    |
| Calif. Rev. & Tax. Code Section 42505.....    | 7    |
| Calif. Rev. & Tax. Code Section 42515.....    | 7    |
| Constitution of the State of California,      |      |
| Article I Section 11.....                     | 3    |
| Constitution of the State of California       |      |
| Article I Section 21.....                     | 3    |
| Constitution of the State of California       |      |
| Article XIII Section 15.....                  | 15   |

**TABLE OF AUTHORITIES CITED (Continued)**

| Statutes                             | Page  |
|--------------------------------------|-------|
| Constitution of the United States    |       |
| Fourteenth Amendment, Section 1..... | 3, 10 |
| United States Code,                  |       |
| Title 28, Section 2101(c).....       | 2     |
| United States Code,                  |       |
| Title 28, Section 1257(3).....       | 2     |

IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1978

No. \_\_\_\_\_

HELEN BALL, INDIVIDUALLY AND ON BEHALF  
OF ALL OTHERS SIMILARLY SITUATED,

*Petitioner,*

vs.

COUNTY OF LOS ANGELES,

*Respondent.*

**Petition For Writ Of Certiorari To The  
Supreme Court Of The State Of California**

Petitioner, Helen Ball, individually and on behalf of all others similarly situated, prays that a Writ of Certiorari issue to review the denial of hearing by the Supreme Court of the State of California rendered on August 24, 1978, and to remand the case to the Supreme Court of the State of California for determination of Ball's appeal. Additionally, petitioner prays that this Court review the opinions and decisions of the Court of Appeals, Second Appellate District, State of California, rendered on June 29, 1978, and determine whether the Court of Appeals improperly affirmed the Summary Judgment of the Superior Court of Los Angeles County, rendered on February 3, 1977.

## OPINIONS BELOW

The denial on August 24, 1978, by the Supreme Court of the State of California, of the Petition for Hearing is reported at Minutes, Supreme Court, San Francisco, August 24, 1978, and is set forth in Appendix A. The opinion and decision of June 29, 1978, of the Court of Appeals, Second Appellate District, State of California, on appeal is reported at 82 Cal. App. 3d 312, and is set forth in Appendix B. Order Dismissing Complaint and Entry of Summary Judgment in Favor of Defendant and Against Plaintiff, dated February 3, 1977, of the Superior Court of the State of California, for the County of Los Angeles, is set forth in Appendix C.

## JURISDICTION

The first Order of the Court of Appeals for the Second Appellate District was entered on June 29, 1978, and the denial of the Petition for Hearing was entered August 24, 1978. This Petition for Writ of Certiorari was filed within 90 days from the last Order as required by Section 2101(c) of Title 28 of the United States Code. The jurisdiction of this Court is invoked under Section 1257(3) of Title 28 of the United States Code.

## QUESTIONS PRESENTED

1. Whether the California Court of Appeals in affirming the Summary Judgment of the Superior Court denied Ball's equal protection of the laws.
2. Whether the Statutes of the State of California as contained in the Revenue and Taxation Code deny citizens equal protection under laws as they presently exist, for paying interest on tax refunds.
3. Whether the conflict of laws of the United States and the States deny United States Citizens equal protection under the laws as they presently exist for paying interest on tax refunds.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provision at the heart of this Petition is the Fourteenth Amendment which states in Section 1. Citizens of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions of the Constitution of the State of California, Article 1 Declaration of Rights, Section 11 (Uniform general laws) states:

"All laws of a general nature shall have a uniform operation."

Section 21 (Privileges and immunities) states:

"No special privileges or immunities shall be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

These provisions have been interpreted by the California courts as being the equivalent of the Equal Protection Clause of the Fourteenth Amendment (*Department of Mental Hygiene v McGilvery*, 50 Cal. 2d 742, 754, 329 P. 2d 689, 695; *Lelande v Lowery*, 26 Cal. 2d 224, 157 P. 2d 639; *San Bernardino v Way*, 18 Cal. 2d 647, 117 P. 2d 354; *People v Sullivan*, 60 Cal. App. 2d 539, 141 P. 2d 200; *People v England*, 140 Cal. App. 310, 35 P. 2d 565; 11 Cal. Jur. 2d Section 272, and cases cited therein. See also *Los Angeles v*

*Southern Cal. Tel. Co.*, 32 Cal. 2d 378, 196 P. 2d 773, appeal dismissed, 336 U.S. 929, 93 L.Ed. 1090, 69 S. Ct. 737).

The Statutes involved include California Civil Code Section 1915, providing the underlying basis for interest; and the California Revenue and Taxation Code: (Appendix G).

**Division 1 Property Taxation**

**Part 9 Corrections, Cancellations, and Refunds**

**Chapter 5 Refunds**

**Article 1 Refunds Generally**

Sections 5104, 5105, 5105.5, 5106, 5107, 5108<sup>1</sup>

**Article 2 Payment Under Protest and Suit to Recover**

Sections 5141, 5141.5, 5142, 5143<sup>2</sup>

**Article 2.5 Interest on Refunds**

Sections 5150, 5151<sup>3</sup>

**Division 2 Other Taxes**

**Part 1 Sales and Use Taxes**

**Chapter 7 Overpayments and Refunds**

**Article 1 Claim for Refund**

Section 6907

**Article 2 Suit for Refund**

Section 6936

**Part 2 Motor Vehicle Fuel License Tax**

**Chapter 7 Overpayments and Refunds**

**Article 2 Claim for Refund**

Section 8130

**Article 3 Suit for Refund**

Section 8151

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<sup>1</sup>Sections 5104, 5105, 5105.5 Repealed by Stats 1976 Chapter 499 Sections 7, 8, 9 and Renumbered Sections 5142 and 5150; Section 5108 Amended and Renumbered Section 5151 by Stats 1976 Chapter 499 Section 10.

<sup>2</sup>Article 2 Sections 5136-5154 Repealed by Stats 1976 Chapter 499 Section 11; Article 2 Sections 5140-5149.5 Added by Stats 1976 Chapter 499 Section 12.

<sup>3</sup>Article 2.5 Interest on Refunds Sections 5150 and 5151 Added by Stats 1976 Chapter 499 Section 13.

**Part 3 Use Fuel Tax**

**Chapter 6 Overpayments and Refunds**

**Article 1 Claim for Refund**

Section 9155

**Article 2 Suit for Refund**

Section 9174

**Part 5 Vehicle License Fee**

**Chapter 3 Collections and Refunds**

**Article 3 Refunds**

Section 10901

**Part 6 Private Car Tax**

**Chapter 5 Overpayments and Refunds**

**Article 1 Claim for Refund**

Section 11555

**Article 2 Suit for Refund**

Section 11576

**Part 6.7 Documentary Transfer Tax Act**

**Chapter 4 Administration**

Section 11934

**Part 7 Insurance Taxation**

**Chapter 7 Cancellations and Refunds**

**Article 2 Refund or Credit for Collected Taxes**

Section 12983

**Chapter 8 Taxpayer's Suits**

Section 13107

**Part 8 Inheritance Tax**

**Chapter 10 Refunds**

Sections 14374, 14375

**Part 9 Gift Tax**

**Chapter 9 Refunds**

**Article 3 Interest on Refunds**

Sections 16271, 16272

**Part 10 Personal Income Tax**

**Chapter 20 Overpayments and Refunds**

**Article 1 Claim for Refund**

Sections 19062, 19062.11

**Article 2 Suit for Refund**

Section 19091

**Part 11 Bank and Corporation Tax Law**

**Chapter 22 Refunds and Credits**

Article 1 General Provisions  
Sections 26080, 26081

Article 2 Suit for Refund  
Section 26107

Part 13 Cigarette Tax  
Chapter 6 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 30366

Article 3 Suit for Refund  
Section 30406

Part 14 Alcoholic Beverage Tax  
Chapter 8 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 32405

Article 2 Suit for Refund  
Section 32417

Part 18.5 Timber Yield Tax  
Chapter 7 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 38606

Article 2 Suit for Refund  
Section 38616

Part 19 State Litter Control, Recycling, and Resource Recovery Assessment<sup>4</sup>  
Chapter 3 Administration  
Section 39202 (Provisions of Division 2 Part 1 Chapter 7 apply)

Part 19 Energy Resources Surcharge Law<sup>5</sup>  
Chapter 5 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 40116

Article 2 Suit for Refund  
Section 40130

Part 20 Emergency Telephone Users Surcharge Law<sup>6</sup>

<sup>4</sup>Part 19 Sections 39000-39251 Added by Stats 1977 Chapter 1161 Section 4 and Repealed by Stats 1978 Chapter 87 Section 16.

<sup>5</sup>Part 19 Sections 40001-40191 Repealed by Stats 1978 Chapter 87 Section 16.

<sup>6</sup>Part 20 Added by Stats 1976 Chapter 443 Section 7.

Chapter 5 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 41105

Article 3 Suit for Refund  
Section 41113

Part 21 State Litter Control, Recycling, and Resource Recovery Assessment<sup>7</sup>  
Chapter 6 Overpayments and Refunds  
Article 1 Claim for Refund  
Section 42505

Article 2 Suit for Refund  
Section 42515

## STATEMENT OF CASE

### A. Statement of Substantive Facts

Helen Ball owns real property which she leased to the City of Los Angeles as a library materials depository between 1971 and 1974. She received erroneous tax bills from the County of Los Angeles and paid taxes on the property in each of the three years. Helen Ball subsequently discovered the assessment was improper and the tax bills were sent erroneously as said property was exempt from taxation under Revenue and Taxation Code Section 202, Subdivision (b) (now Rev. & Tax. Code, Section 202(a)(2)).

Application for exemption from property taxes was filed on April 10, 1974 and processed and verified by the County between April and July of 1974. Helen Ball requested a refund of taxes erroneously collected, plus interest. The County refunded to Helen Ball the erroneously collected taxes without dispute, however, it refused to reimburse her for the use of her money, i.e. pay interest.

In its opinion, the California Court of Appeals below stated at page 315:

"The question presented by this appeal is whether a taxpayer is entitled to recover interest on tax payments *erroneously* collected

<sup>7</sup>Part 21 Enacted by Stats 1978 Chapter 87 Section 17.

by the County on exempt property when the County *promptly* refunds the *erroneous* payments upon being put on notice of its error." (*Ball v County of Los Angeles*, 82 Cal. App. 3d 312, 315) (Emphasis added).

Further, at page 320, the Court of Appeals stated: "This plan is fair. The tax payments at issue were apparently collected by *mutual mistake*. Neither Ball nor the County seem to have been aware of the applicability of the exemption." (Emphasis added).

It is submitted that the question posed by the Court below is incorrect. While it is true the taxes were assessed by mistake and erroneously collected, the payments by the taxpayer were not by mistake nor erroneous.

Ball relied on paragraph 12 of the Lease to direct the payment of taxes, which states:

"TAXES 12. Lessor shall pay all taxes or assessments levied upon real property herein demised, but shall not be liable for any taxes or assessments levied against the personal property or fixtures of the Lessee." (Appendix H).

A taxpayer must be able to pay statements for taxes in good faith, upon the expectation that if the statement is incorrect, then the payment made therefore will not only be refunded, but will be refunded with interest. It matters not that the refund is prompt or imprompt. The sole point is that the use of money requires payment for the use of money.

Again, in its opinion filed on June 29, 1978, at page 320, the Court below continued on with its view as to promptness, saying:

"Ball is denied interest on her tax refund under such a plan because she received her refund *shortly* after she presented her application for exemption to the County — *shortly* after the County had been given

notice that these taxes had been erroneously collected from her." (Emphasis added).

Here again, the fact that the refund was received "shortly" is of no moment. The point, as with promptness, is that whether the refund was received shortly or promptly, after the taxpayer presented her application, she should have been paid for the use of her money.

#### B. Statement of Procedural Facts

Petitioner commenced this action in Los Angeles Municipal Court on May 12, 1975. County demurred on grounds it lacked authority to pay interest; the demurrer was overruled and the County did not appeal. The Honorable Robert Fainer (now Superior Court Judge) presiding, stated:

"The demurrer of the defendant, County of Los Angeles, to the complaint is overruled. The County of Los Angeles has the authority to refund "taxes" and the term "taxes" as used in Revenue and Taxation Code Sections 5107 and 5143 includes penalties, interest and costs. This is not an action to determine the legality of any tax, but is an action to recover the balance of taxes due after a refund, to wit, the interest thereon."

On November 10, 1975 a Second Amended Complaint was filed commencing this class action and was subsequently transferred to Los Angeles Superior Court. County again demurred. In his ruling, Honorable Charles H. Phillips supported Judge Fainer's opinion and denied County's demurrer.

Upon the suggestion of Honorable Campbell M. Lucas, made to counsel for both parties, in order that legal issues could be ruled upon without first trying the factual issues which seemed not to be in dispute, and in order that the legal issues presented herein could expeditiously proceed thereafter to this Honorable Court, if necessary, County filed its Motion for Summary Judgment. Said Motion was

granted by Honorable Campbell M. Lucas and entered in favor of County. (See Order for Dismissal and Summary Judgment and Reporter's Transcript on Appeal, Appendix C and D).

Helen Ball appealed advancing the premise that all parties before a court of law are entitled to equal protection under the law as provided for by the Fourteenth Amendment of the Constitution of the United States (See page 7-8 of Appellant's Opening Brief (Appendix E); Footnote 1, *Ball v County of Los Angeles*, (supra) (Appendix B); and page 10-11 of Petition for Hearing in the Supreme Court of California (Appendix F)). Judgment was affirmed for the County by the Court of Appeals and filed June 29, 1978.

Ball then petitioned for a hearing before the Supreme Court of The State of California as set forth in Appendix F. Petition for Hearing was denied as entered in Minutes of the Supreme Court of the State of California of August 24, 1978 (Appendix A).

#### REASONS FOR GRANTING WRIT

##### A. Ball Denied Equal Protection Of Law By Discriminatory And Arbitrary Legislation For Payment Of Interest On Tax Refunds.

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Taxpayers in the State of California who discover an overpayment of Property Taxes or that they are entitled to a refund on said taxes must by law file a claim with the County and exhaust all administrative remedies prior to filing suit for refund as provided by law. Sections 5096, 5097, 5099, 5103 (now 5141), 5104 (now 5142) of Revenue and Taxation Code.

A claim for refund if acknowledged as valid by Board of Supervisors will be paid by warrant upon the appropriate fund (Section 5101) with no provision for interest. If claim is denied, taxpayer may then file suit per Section 5103 (now 5141). When the Court acknowledges the claim as valid, interest may be recovered per Sections 5105 and 5105.5 (now 5150).

Under both of these situations the taxpayers are in the basic underlying similar circumstance of having a valid claim against the County for refund of erroneously collected taxes and the County has had the use of their money without just compensation.

There is no equitable reason on one hand, that the County can have the use of taxpayers' money without just compensation (interest) only because the Board of Supervisors acknowledges the validity of the claim when presented, where on the other hand if a claim is denied and a Court of Law acknowledges the same claim as valid, taxpayers are allowed just compensation (interest) for the use of their money by the County.

It is therefore submitted that this different treatment of taxpayers who have a claim of refund and for just compensation of the use of their money by the County is not fair, equitable nor affords equal protection under the law.

As this Honorable Court put forth in *Louisville Gas & Electric Co. v Clell Coleman* (1928), 277 U.S. 32, 37, 72 L.Ed. 770, 774, 48 S. Ct. 423:

"In the first place, it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, *Kentucky R. Tax Cases*, 115 U.S. 321, 327, 29 L.Ed. 414, 419, 6 Sup. Ct. Rep. 57; *Magoun v Illinois Trust & Sav. Bank*, 170 U.S. 283, 293, 42 L.Ed. 1037, 1042, 18 Sup. Ct. Rep. 594, and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation. *Santa Clara County v Southern P. R. Co.*, 9 Sawy. 165, 18 Fed. 385, 388-399; *Re Railroad Tax Cases*, 8 Sawy. 238, 13 Fed. 722, 733. It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification "must be

reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *F. S. Royster Guano Co. v Virginia*, 253 U.S. 412, 415, 64 L.Ed. 989, 990, 40 Sup. Ct. Rep. 560; *Airway Electric Appliance Corp. v Day*, 266 U.S. 71, 85, 69 L.Ed. 169, 177, 45 Sup. Ct. Rep. 12; *Schlesinger v Wisconsin*, 270 U.S. 230, 240, 70 L.Ed. 557, 564, 43 A.L.R. 1224, 46 Sup. Ct. Rep. 260. That is to say, *mere* difference is not enough: the attempted classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis." *Gulf, C & S F R Co. v Ellis*, 165 U.S. 150, 155, 41 L.Ed. 666, 668, 17 Sup. Ct. Rep. 255." (Emphasis in original).

It was also stated in recent decisions of this Court that different treatment of persons placed into different classes by statute cannot be legislated, as set forth in *Thomas S. Eisenstadt v William R. Baird* (1972), 405 U.S. 438, 446-447, 31 L.Ed. 2d 349, 358-359, 92 S. Ct. 1092:

"The basic principles governing application of the Equal Protection Clause of the Fourteenth Amendment are familiar. As The Chief Justice only recently explained in *Reed v Reed*, 404 U.S. 71, 75-76, 30 L.Ed. 2d 225, 229, 92 S. Ct. 251 (1971):

"In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. *Barbier v Connolly*, 113 U.S. 27, 28 L.Ed. 923, 5 S. Ct. 357 (1885); *Lind-*

*sley v Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L.Ed. 369, 31 S. Ct. 337 (1911); *Railway Express Agency v New York*, 336 U.S. 106, 93 L.Ed. 553, 69 S. Ct. 463 (1949); *McDonald v Board of Election Commissioners*, 394 U.S. 802, 22 L.Ed. 2d 739, 89 S. Ct. 1404 (1969). The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v Virginia*, 253 U.S. 412, 415, 64 L.Ed. 989, 990, 40 S. Ct. 560 (1920)."

It is respectfully submitted that the treatment and classification of taxpayers in California with regard to paying just compensation or interest on property tax refunds by claim or suit does not meet the principles as set forth in *Louisville Gas & Electric Co. v Coleman* (supra). The difference in classification and treatment is unreasonable and arbitrary, having no fair and substantial relation to the object of the legislation.

In *Christopher Green v State of California* (1887), 73 C. 29, 30, the California Supreme Court set forth the following principle of conduct between individuals and state which has been subsequently followed:

"A state, in its conduct with individuals, must be judged by the same rules which govern in similar cases between individuals; and whenever by its own consent, it comes into court for the adjudication of its rights and obligations, those rights and obligations should be adjusted upon the same principles

as if both parties to the suit were private individuals. (*People v Stevens*, 71 N.Y. 527.)"

California Revenue and Taxation Code in all its parts authorizes assessment of penalty and interest if returns or payment of taxes are delinquent and additional penalties for intentional failure or fraud. (See Sections 2617, 2618, 2704, 2705, 2759-2762, 2922, 2922.5 re penalty and interest for Property Taxes). There is no requirement for suit against the taxpayer to collect these penalties and interest. Yet the County, supposedly judged by the same rules, refuses to pay interest on refund of property taxes unless taxpayer is forced to sue.

The theory of interest as set forth in California Civil Code Section 1915 is:

"Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money."

The delinquent taxpayer detains money belonging to the state and must pay penalty and interest without suit for the use and detention of state's money. However, when the state erroneously collects taxes, it has the use of the taxpayer's money but refuses to pay interest for the use and detention of that money unless the taxpayer is forced to sue.

It is therefore submitted that this treatment and classification by the state is neither fair, equitable nor in keeping with the principle of *Green v State of California* (supra).

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#### B. California Revenue And Taxation Code As Presently Constituted Is Discriminatory And Arbitrary In Its Policy Of Payment Of Interest On Overpayments And Refunds Of Taxes.

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California Revenue and Taxation Code contains approximately 18 various types of taxes imposed by law upon the citizens of the State. All Parts provide for the State to assess and collect, without suit, penalties for delinquent returns

and/or payments plus interest for the use of money due the State by taxpayers from the date due until paid.

One Part, Vehicle License Fee, provides for a refund of erroneously collected fees but no provision for interest.

Two Parts, Property Taxation and Documentary Transfer Tax, have provisions for refunds of erroneously collected tax by 1) claim against the agency, but does not provide for interest by this method; 2) suit of agency with provisions for interest.

The fifteen remaining taxes provide for refund by claim against the agency and for suit to recover erroneously paid taxes and both methods of recovery provide for interest for the use of taxpayer's money.

The last paragraph of Section 15 of Article XIII, Revenue and Taxation, of the Constitution of the State of California requires allowance of interest on recovery of an illegally collected tax:

"No injunction or writ of mandate or other legal or equitable process shall ever issue in any suit, action or proceeding in any court against this State, or any officer thereof, to prevent or enjoin the collection of any tax levied under the provisions of this article; but after payment thereof action may be maintained to recover, with interest, in such manner as may be provided by law, any tax claimed to have been illegally collected."

(Emphasis added).

The filing of a claim for refund is an action provided by law and the law requires exhaustion of all administrative remedies prior to the state allowing suit. The California Constitution does not specify *legal* action by suit to recover taxes paid.

It is clear that the Constitution of the State of California and fifteen Parts of the Revenue and Taxation Code intend that the state pay interest for the use of a taxpayer's money received and collected illegally. Erroneous collection of taxes is illegal and the taxpayer should be reimbursed for the use of this money by the County just as by law the County

requires interest from the taxpayer for the use of its money not paid when due the County.

It has been set forth by this Honorable Court in *Eisenstadt v Baird* and *Reed v Reed* (supra) that a State is not denied "the power to treat different classes of persons in different ways" but does not have "the power to legislate that treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute."

The State of California, by statute, has classified persons into various tax categories making them similar in circumstances, basically all being taxpayers. However, California has by statute accorded a different treatment of these taxpayers with regard to payment of interest, for the use of their money by illegally or erroneously collected taxes, contrary to the case law established by this Court and the Constitution of the State of California. The criteria of paying interest on refunds to some and not others is wholly unrelated to the objective of the Revenue and Taxation Code which under the Constitution of the State of California is to create revenue by lawful means for the State.

Property taxpayers are denied the same treatment as other taxpayers. All must exhaust administrative remedies before initiating suit, however, property taxpayers are denied compensation for the use of their money by the State through these remedies unlike other taxpayers and are therefore denied the possibility of recovery by suit in order to be made whole, denying them their constitutional right to equal protection under the law.

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#### C. The Supreme Court And Lower Federal Courts Have Already Affirmed The Proposition That Citizens Are Entitled To Recovery Of Interest In Connection With A Refund Of Tax.

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The subject of the right of a taxpayer to collect interest on a tax refund is annotated in 57 A.L.R. 357, 76 A.L.R. 1012,

and 112 A.L.R. 1183. While there is some conflict among the authorities on this issue, it appears from these annotations that a majority of jurisdictions mandate recovery on interest.

The Honorable Learned Hand declared in *Proctor Gamble Distributing Co. v Sherman* (1924), 2 F. 2d 165, 166 (D.C.N.Y.):

"... it is not an adequate remedy, after taking away a man's money as a condition of allowing him to contest his tax, merely to hand it back, when, no matter how long after, he established that he ought never to have been required to pay at all. Whatever may have been our archaic notions about interest, in modern financial communities a dollar today is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well-settled beliefs about value, and, if I get no compensation for its loss, my remedy does not altogether right my wrong."

The United States Supreme Court has recognized for over 100 years that: "Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction." *Erskine v Van Arsdale* (1872) 15 Wall. (U.S.) 75, 77, 21 L.Ed. 63. See also: *Redfield v Bartels* (1891), 193 U.S. 694, 11 Sup. Ct. 683, 35 L.Ed. 310; *National Home v Parrish* (1913), 229 U.S. 494, 33 Sup. Ct. 944, 57 L.Ed. 1296; *Billings v United States* (1914), 232 U.S. 261, 286, 34 Sup. Ct. 421, 58 L.Ed. 596; *State, etc., Co. v Davis* (1915) (D.C.), 228 Fed. 246, 250; *Haiku Sugar Co. v Johnstone* (1918), 249 Fed. 103, 109, 161 C.C.A. 155; *International Paper Co. v Burrill* (1919) (D.C.), 260 Fed. 664, 667.

In *International Paper Co. v Burrill* (supra), at page 669, the Court held: "As the money was wrongfully obtained by the defendant through implied duress, and as it is no defense that the defendant has paid the money into the

treasury of the commonwealth, there must be judgment for the plaintiff for the amount of the tax, with interest thereon from the date of payment, May 22, 1916."

Modernly, the "adequacy of remedy at law" issue was raised in *Mullaney v Hess* (1951), 189 F. 2d 417 (9th Cir.). Applying Alaska law, the Court stated:

"We think that the weight of authority is that interest is recoverable on tax refunds in absence of express statutory authority therefor. The reasoning of these cases is in harmony with the modern view they express." *Id.* at 420.

In 1957 in *Ketchikan Spruce Mills v Kewey* (1957), 17 Alaska 336, the United States District Court for Alaska also permitted recovery of interest under a territorial statute which provided for refund of taxes but made no mention of interest.

Of all the states, Pennsylvania has the most thoroughly developed case law on the question of interest on refunds of real property taxes. There has, moreover, been an evaluation of principles in that state which will be illuminating in the case of Helen Ball.

The underlying principles were enunciated in the leading and often cited case of *Philadelphia and Reading Coal and Iron Co. v School District of Borough of Tamaqua* (1931), 304 Pa. 489, 156 A. 75. Plaintiff won a judgment that real property taxes for the benefit of the school district had been improperly assessed. The court held:

"One further question raised in argument remains to be determined, whether or not plaintiff is entitled to interest on the amount paid in excess of the proper levy. The judgment as it now stands is for the total excess payment, \$8,547.75, with interest at 6 per cent, from September 21, 1923, the date of payment by plaintiff, the whole amounting to \$12,137.80. The precise point does not appear to have been raised before in this court, and we are thus free to deal with it

unhampered by precedent. It is unnecessary to review the wealth of conflicting authorities in other jurisdictions . . . . The weight of authority appears to be that, where the taxpayer is entitled to a refund on an excess payment of taxes, whether such right accrues by virtue of statute or not, the taxpayer is entitled to interest on the refund if no statute or public policy militates against it. Such is the law in the United States courts . . . as well as several other states.... With this view we agree." 156 A. at 77 (Citations omitted).

In *Cities Service Oil Co. v City of Pittsburgh* (1972), 449 Pa. 481, 297 A. 2d 466, the court discussed the various rules in a context of mercantile license taxes paid for the benefit of a school district. The court's decision appears to be equally applicable to real estate taxes, especially since the whole line of decisions originated with *Tamaqua*. It was held, in broad and useful language:

"If a taxpayer is entitled to a tax refund, he is also entitled to interest on the refund so long as no statute or public policy militates against it, . . . . The commonwealth Court, in determining the date from which to compute the interest due Cities Service, stated, ' . . . before interest will accrue there must be an improper detention by the taxing authority; and the taxpayer must make a demand for refund. . . . However, the taxing authority's detention of the taxpayer's money is not improper until there has been a decision to this effect.' . . .

"We agree that there must be an improper detention and that the taxpayer must make a demand for refund. We disagree that in all cases improper detention commences from the date of a decision to that effect. Rather, we believe that a court can decide that a tax-

ing body has improperly detained the taxpayer's money from a point in time prior to the determination that the detention is improper. . . .

"Here the taxpayer has asked that interest be computed from the date of payment and demand for refund. *Courts in charging and allowing interest need not limit themselves by hard and fast rules but should charge and allow interest in accordance with principles of equity . . .* That the taxpayer's money was improperly detained and demand for refund made should be sufficient to justify a court's exercise of its equity powers. Here, however, the taxpayer paid the taxes promptly once they were assessed; inflation had deteriorated the value of the dollar that was improperly detained by the City and School District; and the City and School District, never having any right to the money, were able to borrow less or invest the money. Since the City and School District benefited from the use of the taxpayer's money, it is only fair that the taxpayer receive simple interest for the period the money was improperly detained.

"Moreover, if taxing authorities are authorized to collect combined interest and penalties on back taxes to their original due dates (at a rate greater than the simple interest sought here on a refund), we see no hardship in requiring them to pay simple interest on amounts improperly detained from the date of payment and demand." 297 A. 2d at 468-469 (Citations omitted; emphasis added).

The equitable principles enunciated in that case should be applied in the case of Helen Ball.

In *Bryam v Thurston County* (1926), 141 Wash. 28, 251

P. 103, upon reargument, 141 Wash. 28, 252 P. 943 (1927), interest was allowed on real property taxes illegally assessed and paid under protest. The court referred to an older case which awarded interest but gave no reason for the award:

"It is also contended that in any event the interest allowed from the date of the payment of the illegal tax under protest is improper, citing authority from other jurisdictions to the effect that interest is never allowed on illegal taxes sought to be recovered after payment. We seem to have settled this question in this state in the case of *Great Northern Railway Co. v Stevens County*, 108 Wash. 238, 183 P. 65, where we gave directions to enter judgment in favor of the company against the County for the amount of the illegal tax, with legal interest from March 6, 1918, the date on which the railway company was compelled to, and did, pay an excessive an illegal tax.

"After having examined and considered all the questions raised in the case, we are convinced that the judgment was right." 251 P. at 110. See also *Doric Co. v King County*, 59 Wash. 2d 741, 370 P. 2d 254 (1962).

In Arizona, the principal decision is *State Tax Commission v United Verde Extension Mining Co.* (1931), 39 Ariz. 136, 4 P. 2d 889. The Court relied upon statutory authorization for the award of interest but gave as its reason an equitable argument:

"(I)n reason and logic, when the state compels one of its citizens under the pain of forfeiting all rights of recovery, to pay in advance of suit a sum of money which it is afterwards adjudged was illegally demanded, the same principle of common justice would require that the state, to make the citizen whole, should repay not merely the sum illegally so obtained, but interest from

the date the money was paid to it. Were this a case of a small taxpayer, who, in order to maintain his suit, was compelled to borrow money to pay the illegal tax, it would be recognized at a glance that full justice could only be done by repaying to him, not only the sum so paid, but interest thereon, and in principle no difference exists because the taxpayer in this case happens to be a large corporation which presumably had in its treasury the funds to pay the tax." 4 P. 2d at 399.

The reasoning of the *United Verde* case was relied upon in *Williams v Harvey* (1931), 91 Mont. 168, 6 P. 2d 418, which was, however, also a case based primarily on statute. See also *Ford Motor Co. v City of Detroit* (1973), 43 Mich. App. 248, 204 N.W. 2d 348.

In South Dakota, the leading case is *Zimmerman v Corson County* (1917), 39 S.D. 167, 163 N.W. 711. The Court spoke of interest in the context of whether an injunction should be issued, a disallowance of interest resulting in "no adequate remedy at law." It was held:

"Respondent's suggestion that the remedy is not adequate for the reason that the statute does not in terms authorize a recovery of interest is without merit. It cannot be doubted that plaintiff would be entitled to interest upon any sum wrongfully collected by the County; nor can we agree with respondent's suggestion that the enforced collection of a tax, unlawful in whole or in part, may result in irreparable injury such as to entitle the plaintiff to a remedy by injunction." 163 N.W. at 713.

Likewise in *Chicago St. P. M. & O. Ry. v Mundt* (1930), 56 S.D. 530, 229 N.W. 394, it was held:

"It seems to us the fair, just and reasonable rule that, when the sovereign submits itself to suit, unless the statute expressly provides

to the contrary, it should come into court on the same basis as to liability for interest and costs, in the event of adverse decision, as any other suitor. . . .

" . . . Conceding that sovereignty is not subject to suit without its consent, and that a suit to recover taxes paid may be deemed a suit against the sovereign, nevertheless when the sovereign consents to suit it ought not to be given an unfair and arbitrary advantage therein, beyond what is accorded to other suitors similarly circumstanced, unless necessity or the language of a statute so requires. We think *Zimmerman v Corson County* announces a rule consonant with justice and supported by many decisions, and we are not now disposed to depart from it merely because it was not treated at more length when announced, or because there is and has been some conflict in the decisions relating to the point." 229 N.W. at 395.

See also *Chicago and Northwestern Ry. v Schmidt* (1970), 85 S.D. 223, 180 N.W. 2d 233 (plaintiff entitled to interest but employed erroneous procedure).

In Indiana, the court rejected contractual arguments in a case involving taxes on the receipts of an insurance company and relied on cases of the United States Supreme Court:

"(I)n actions to recover back money unlawfully enacted in the name of the state by a public officer, of which the state has had the possession and use, and of the use of which the owner has been deprived since it was so paid under compulsion, a different rule has been applied. For many years the Supreme Court of the United States has uniformly held that 'in suits against collectors to recover moneys illegally exacted as taxes and paid under protest \*\*\* interest is

recoverable without any statute to that effect, and this, although the judgment is not to be paid by the collector but directly from the treasury.' *Erskine v Van Arsdale*, 15 Wall. (U.S.) 75, 77, 21 L.Ed. 63 (1872). . . . "The rule thus adopted is just and equitable and should be followed in the absence of any positive law to the contrary." *Metropolitan Life Insurance Co. v State*, 194 Ind. 657, 144 N.E. 420, 422 (1924) (Citations omitted).

An older case, much cited, held under statutory authority that interest should be paid from the date of demand. *Boott Cotton Mills v City of Lowell* (1893), 159 Mass. 383, 34 N.E. 367.

### CONCLUSION

It is evident that the majority of jurisdictions favors payment of interest for the use of a taxpayer's money by the state.

It is not an adequate remedy, after using a taxpayer's money, merely to hand it back to him no matter how long after he established he need not have paid it at all. With the economic situation of a dollar today being worth less next year, it is not fair, equitable or just that states can legislate laws denying a citizen what he justly and rightfully deserves and that which other citizens in different jurisdictions justly and rightfully obtain. It denies them their constitutional right to equal protection under the laws of the land.

The Constitution of the State of California requires interest to be paid for the use of taxpayers money from illegally collected taxes and the Fourteenth Amendment to the Constitution of the United States provides equal protection under the laws. Inasmuch as Helen Ball has been denied her rights under law, review by certiorari is the only effective means of assuring that Helen Ball will not lose those rights.

It is therefore urged that this Court review and remand this case to the Supreme Court of the State of California with an order that the Supreme Court of the State of

California decide the merits of Ball's appeal which was directed to the issue of whether Ball was entitled to interest for the use of money illegally and erroneously collected as taxes as provided in the Constitution of the State of California.

Petitioner also urges that this Court decide whether the Court of Appeals, Second Appellate District, State of California improperly affirmed the Summary Judgment of the Superior Court of Los Angeles County, thereby denying Ball of her constitutional right to equal protection of the law and what is justly and rightfully hers.

Respectfully submitted,

HELEN BALL, INDIVIDUALLY  
AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED,  
By VOLNEY F. MORIN, JR.,

VOLNEY F. MORIN,  
VOLNEY F. MORIN, JR.,  
VOLNEY F. MORIN, INC.  
LAW CORPORATION

*Attorneys for Petitioner.*

**APPENDIX A.**

**MINUTES**

**SUPREME COURT**

**SAN FRANCISCO, AUG. 24, 1978**

— (2d Civ 52206, Div 3)—Ball v. County  
of Los Angeles. (82 Cal. App. 3d 312.) Ap-  
pellant's petition denied.

## APPENDIX B.

### COURTS OF APPEAL SECOND APPELLATE DISTRICT DIVISION THREE

**312 BALL V. COUNTY OF LOS ANGELES**  
82 Cal. App. 3d 312; \_\_\_\_\_ Cal. Rptr. \_\_\_\_\_

(Civ. No. 52206. Second Dist., Div. Three. June 29, 1978.)

**HELEN BALL, Plaintiff and Appellant, v.  
COUNTY OF LOS ANGELES,  
Defendant and Respondent.**

#### SUMMARY

Plaintiff commenced an action against a county, alleging that she was entitled to recover interest on property taxes voluntarily refunded to her by defendant. The refund was promptly paid by the county upon receipt and verification of information that certain property owned by plaintiff and upon which she had paid tax was exempt from taxation. The trial court granted a motion for summary judgment in favor of defendant county. (Superior Court of Los Angeles County, No. CA 000289, Campbell M. Lucas, Judge.)

The Court of Appeal affirmed. The court held that there was no right to interest as payment for the use of money unless the right has been created by statute or by an express or implied contract. In California, there is no implied contract of any kind that the state or county will pay interest on its indebtedness. The court also held that Rev. & Tax. Code, Section 5107, does not authorize accrued interest on a tax refund. The court further held that the existence of specific sections in the Revenue and Taxation Code express-

ly providing for the payment of interest on tax refunds negates any conclusion that a taxpayer's entitlement to interest is provided for generally. Under the doctrine of "the expression of one excludes the other" the failure of the Legislature to provide expressly for the payment of interest on certain refunds while expressly providing for such payment on other refunds indicates an intention to exclude from the omitted refunds the obligation of interest. Finally, the court held that the Revenue and Taxation Code reveals a comprehensive legislative plan which authorizes recovery of interest on a tax refund only where a county, with notice of an improper assessment has failed to grant a tax refund. Thus, plaintiff was not entitled to a refund. She received her refund shortly after she presented her application for exemption to the

(82 Cal. App. 3d 313)

county and shortly after the county had been given notice that these taxes had been erroneously collected from her. (Opinion by Cobey, Acting P.J., with Allport, and Potter, JJ., concurring.)

#### HEADNOTES

Classified to California Digest of Official Reports, 3d Series

- (1) **Interest Section 2—When Interest Recoverable or Allowable.** It is well established that there is no right to interest as payment for the use of money unless the right has been created by statute or by an express or implied contract.
- (2) **Interest Section 2—When Interest Recoverable or Allowable.** The state, or subdivisions thereof, are liable for interest for the use of a taxpayer's money only if there is a specific statute authorizing the payment of interest on refund.
- (3a, 3b) **Property Taxes Section 63 —Collection and Payment—Actions to Recover Taxes—Interest.**—In an action against a county to recover interest on property

taxes voluntarily refunded by the county, Rev. & Tax. Code, Section 5107 does not authorize the payment of interest by the county for the use of a taxpayer's money. Section 5107 is a general definitional section which makes clear that interest collected from the taxpayer in connection with tax payments will be included in any refund of those taxes. The section defines only the scope of tax refunds and does not constitute authorization for the payment of interest by a county.

(See Cal. Jur. 2d, Taxation, Section 382; Am. Jur. 2d, Interest and Usury, Section 34.)

- (4) **Statutes Section 39—Giving Effect to Statute—Confirmation of Parts—Construction of Statute in Context.**—A cardinal rule of statutory interpretation is that code sections are not to be read in isolation but construed in context.
- (5) **Property Taxes Section 63—Collection and Payment—Actions to Recover Taxes—Interest.**—The existence of various sections in the Revenue and Taxation Code expressly providing for the payment of interest on tax refunds negates the conclusion that a taxpayer's entitlement

(82 Cal. App. 3d 314)

to interest is provided for generally. Under the doctrine of "the expression of one excludes the other," the failure of the Legislature to provide expressly for the payment of interest on certain refunds while expressly providing for such payment on other refunds indicates an intention to exclude from the omitted refunds the obligation of interest.

- (6) **Property Taxes Section 63—Collection and Payment—Actions to Recover Taxes—Recovery of Interest.**—The Revenue and Taxation Code reveals a comprehensive legislative plan which authorizes recovery of interest on a tax refund only where a county, with notice of an improper assessment, has failed to grant a tax refund. Interest is denied on tax refunds unless and until the county receives notice of its error,

and interest does not begin to accrue until the date of the filing of the claim for refund.

- (7) **Restitution and Constructive Contracts Section 1—Interest.**—Where money has been improperly paid by one private party to another under a mutual mistake, interest will not begin to accrue until the mistake is discovered and a demand for restitution made. Interest is not recoverable until and unless an individual has notice of his duty to make restitution.
- (8) **Counties Section 16—Claims—Interest.**—Where the government owes a liquidated claim upon a definite date, that claim does not draw interest until demanded based on the consideration that it would be inconvenient and burdensome for the officials of a municipality or county to seek its creditors and tender payment of their claims, and also that it would be oppressive and unjust to permit creditors of a municipality or county with good credit to turn claims into investments through omitting to present them and collecting interest thereon.

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#### COUNSEL

Volney F. Morin and Volney F. Morin, Jr., for Plaintiff and Appellant.  
John H. Larson, County Counsel, and Charles J. Moore, Deputy County Counsel, for Defendant and Respondent.

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(82 Cal. App. 3d 315)

#### OPINION

**COBEY, Acting P.J.**—Helen Ball, suing individually and on behalf of all others similarly situated, appeals from a summary judgment entered in favor of the County of Los Angeles (hereafter County) on her complaint alleging that she is entitled to recover interest on property taxes voluntarily refunded to her by the County. The refund was paid by the County upon receipt and verification of information that certain property owned by Ball and upon which she

had paid tax was exempt from taxation. The appeal lies. (Code Civ. Proc., Sections 437c, 904.1, subd. (a).)

The question presented by this appeal is whether a taxpayer is entitled to recover interest on tax payments erroneously collected by the County on exempt property when the County promptly refunds the erroneous payments upon being put on notice of its error.<sup>1</sup> We will answer this question in the negative. A taxpayer has no right to recover interest from the County unless interest is provided for by statute and such is not the case here.

## FACTS<sup>2</sup>

During the three year period between 1971 and 1974 Ball owned real property which she leased to the City of Los Angeles as a library materials depository. Due to the nature of the property's use, Ball was entitled to exemption of it from property taxation. (Former Rev. & Tax. Code, Section 202, subd. (b).)<sup>3</sup> Nevertheless, no application for exemption

<sup>1</sup>Ball raises two additional contentions which need not be dealt with at length. First, she contends that two trial court rulings prior to the summary judgment—overruling demurrers raising the same issue raised by the County's motion for summary judgment—established her right to interest on the refunds as the law of the case and therefore should have been determinative of the motion for summary judgment. The fatal defect in this contention is that this doctrine applies only to a prior decision in the case determined by an *appellate court*. The rulings of a *trial court* during an earlier stage in the proceeding are not conclusive. (See *Davies v Krasna* (1975) 14 Cal. 3d 502, 507 (121 Cal. Rptr. 705, 535 P. 2d 1161, 79 A.L.R. 3d 807); 6 Witkin, Cal. Procedure (2d ed. 1971) Sections 633-634, pp. 4552-4553.)

Ball's second additional contention is that she is entitled to interest on her refund as a matter of her constitutional right to equal protection of the law. (See U.S. Const., 14th Amend.) In response we need only note that this contention is unsupported by apposite authority.

<sup>2</sup>The parties agree that there is no dispute between them with regard to the facts.

<sup>3</sup>This exemption has been recodified as Revenue and Taxation Code section 202, subdivision (a)(2). All references to former code sections refer to sections in effect at the time of the action at issue.

## (82 Cal. App. 3d 316)

from property taxes was filed with the County until April 10, 1974, and taxes were collected on the property in each of the three years.<sup>4</sup>

The County processed and verified Ball's exemption claim between April and July of 1974. The County did not dispute Ball's right to a refund and on August 12, 1974, a warrant was issued to Ball refunding to her taxes paid on the exempt property between 1971 and 1974. No interest was included in the refund payment.

## DISCUSSION

### 1. *County Is Liable for Interest Only Where Such Liability Is Created by Statute*

(1) It is well established that there is no right to interest as payment for the use of money unless the right has been created by statute or by an express or implied contract. (45 Am. Jur. 2d, Interest and Usury, Sections 34-35, pp. 39-40; cf. Civ. Code, Section 1428.) There is a split of authority, however, on the question of governmental liability for interest on tax refunds. In some jurisdictions it is held that there is an implied contract between the state and the taxpayer that the state will be liable for interest for the period of time it has the use of the taxpayer's money. Therefore these jurisdictions have adopted the rule that a state or municipal corporation which must refund all or part of a tax which has been paid is liable for interest on the refund even in the absence of a statute which specifically authorizes payment of interest. (Annot., Right to Interest on Tax Refund or Credit in Absence of Specific Controlling Statute

<sup>4</sup>A request for refund of tax payments will be acted upon if the claim for refund is filed within four years after the making of the payment. (Rev. & Tax. Code, Section 5097, subd. (b).) Legislation which became effective subsequent to the case at bench, however, now requires submission of an annual application for exemption and allows only a partial refund if the taxpayer fails to file a timely application. (Rev. & Tax. Code, Sections 255, 270; 58 Ops. Cal. Atty. Gen. 538, 539-541 (1975).)

(1963) 88 A.L.R. 2d 823, 825-827, Section 2, and cases cited.) Other jurisdictions have rejected the implied contract theory and follow the rule that there is no liability for interest on a refund in the absence of a statute that specifically creates a liability for such interest. (*Idem.*, 88 A.L.R. 2d 823, 835-840, Section 5, and cases cited.)

Several rationales have been advanced for the rule requiring specific statutory creation of governmental liability for interest on tax refunds. The rule has been said to be based upon the doctrine that requires the state's consent before the state becomes liable. (*Columbia Steel Co. v. State* (1949) 34 Wn. 2d 700 (209 P. 2d 482, 489); cf. *Sovereign Immunity* (82 Cal. App. 3d 317)

*Study* (Feb. 1963) 5 Cal. Law Revision Com. Rep., pp. 17-21.) It is suggested that the rule is supported by the theory that a contract for interest is implied only when there is either delay or default on the part of the debtor and such delay or default will not be attributed to the government since it is presumed that the government always stands ready to pay what it owes promptly. (*Monarch Mills v. South Carolina Tax Commission* (1929) 149 S.C. 219 (146 S.E. 870, 872); cf. Evid. Code, Section 664; *Tripp v. Swoap* 1976) 17 Cal. 3d 671, 683 (131 Cal. Rptr. 789, 552 P. 2d 749.) The rule has been said to rest upon the practical consideration that the tax collector has no money to pay interest in the absence of statutory authority to establish a fund for that purpose. (*Lakefront Realty Corporation v. Lorenz* (1960) 19 Ill. 2d 415 (167 N.E. 2d 236, 240-241).) Finally, several jurisdictions found the rule to be required by state constitutional provisions prohibiting payments from the state treasury in the absence of a legislative act or resolution. (*New England Mut. Life Ins. Co. v. Reece* (1935) 169 Tenn. 84 (83 S.W. 2d 238, 242); *Kaemmerling v. State* (1924) 81 N.H. 405 (128 A. 6, 7); see Cal. Const., art. XVI, Section 7; *Richter v. Board of Supervisors* (1968) 259 Cal. App. 2d 99, 105 (66 Cal. Rptr. 52).)

(2) California has adopted the rule which requires a specific statutory provision to create governmental liability for interest. "(W)hatever the law may be elsewhere it has

always been the rule in California that there is no implied contract of any kind that the state will pay interest on its indebtedness for it is liable only when made so by statute." (*Gregory v. State of California* (1948) 32 Cal. 2d 700, 703 (197 P. 2d 728, 4 A.L.R. 2d 924); *People v. Union Oil Co.* (1957) 48 Cal. 2d 476, 480 (310 P. 2d 409); *Jones-Hamilton Co. v. Franchise Tax Bd.* (1968) 268 Cal. App. 2d 343, 350 (73 Cal. Rptr. 896).) Therefore the County<sup>5</sup> is liable to Ball for interest for the use of her money only if there is a specific statute authorizing the payment of interest on her refund.

## 2. *The Statutory Scheme Denies Interest on Ball's Refund*

(3a) Ball contends that accrued interest on her tax refund is authorized by Revenue and Taxation Code section 5107 and former section 5143.<sup>6</sup> We disagree. We do not believe that these sections authorize the

(82 Cal. App. 3d 318)

payment of interest by the County for the use of a taxpayer's money. For reasons set forth below, we believe that these sections are merely general definitional sections which make clear that interest collected from the taxpayer in connection with tax payments (i.e. upon delinquent payment of taxes) will be included in any refund of those taxes. Specific sections of the Revenue and Taxation Code govern the payment of interest on tax refunds and indicate a comprehensive plan that denies interest on erroneously collected taxes during the period within which the taxpayer has failed to put the County on notice of the erroneous levy.

(4) A cardinal rule of statutory interpretation is that code sections are not to be read in isolation but construed in context. (*Tripp v. Swoap, supra*, 17 Cal. 3d at p. 679;

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<sup>5</sup>Counties in California are subdivisions of the state. (Cal. Const., art. XI, Section 1; Gov. Code, Section 23000; *Byers v. Board of Supervisors* (1968) 262 Cal. App. 2d 148, 155 (68 Cal. Rptr. 549).)

<sup>6</sup>Section 5143 was subsequently repealed. (Stats. 1976 ch. 499, Section 11, p. 1240.) All section references hereafter are to sections of the Revenue and Taxation Code unless otherwise noted.

*Stanley v. Justice Court* (1976) 55 Cal. App. 3d 244, 249 (127 Cal. Rptr. 532.) (3b) Section 5107 and former section 5143 were once both part of the chapter of the Revenue and Taxation Code regarding refunds. Section 5107 remains a part of an article related to refunds generally. Section 5143 was part of the article regarding recovery of taxes paid under protest. These two sections have identical language. They both state that "as used in this article, 'tax' or 'taxes' include penalties, interest, and costs."

Although both these sections define "tax" as including interest, when read in context, it becomes clear that they refer only to the return of funds collected from the taxpayer. Whenever the word "tax" is used throughout the articles it is modified by the words "paid," "collected," "recovery," or "refund." Each of these modifiers implies that the "tax," defined to include penalties, interest, and costs, has already been collected from the taxpayer by the County. Thus, these sections define only the scope of tax refunds.

Such definition is necessary since tax refunds under section 5096 include both delinquent and nondelinquent taxes. The former may have interest, costs, and penalties added to the tax assessment itself. (See Section 6591.)

(5) Likewise, an examination of the articles of which these two sections were a part reveals the existence of various sections expressly providing for the payment of interest on tax refunds. (Former Sections 5105, 5108, 5141;<sup>7</sup>

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<sup>7</sup>These sections were subsequently repealed, but largely reenacted in other section. (See Sections 5150, 5151.)

Section 5105 stated: "In any action in which the recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate per centum per annum equal to the rate per centum per annum that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes from the date of the filing of the claim for refund to the date of entry of judgment, and such accrued interest shall not apply to taxes paid before the effective date of this action."

Current section 5150 was derived from former section 5105.

Section 5108 stated:

"Interest at the rate of 6 percent per annum shall be paid, when such interest is ten dollars (\$10) or more, on amounts refunded under Section

Ehrman and Flavin, *Taxing Cal. Property*, Sections 494, 495, 497,

(82 Cal. App. 3d 319)

pp. 474, 477, 479; (1976 supp.) Section 496b, pp. 308-309; Marshall, *State and Local Taxation*, Section 128, subd. (c), p. 166; (1977 pocket pt.) Section 128, subd. (i), pp. 113-114.) While these last mentioned sections do not apply to the cases at bench,<sup>8</sup> the existence of these specific sections negates the

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5096.3 or 5096.7, or refunded as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes. However, no interest shall be paid under the provisions of this section if the taxpayer has been given the notice required by Section 2635 and has failed to apply for the refund within 30 days after the mailing of such notice.

"Interest allowed under this section shall be computed from the date of the recording of the deed to the public agency acquiring the property in eminent domain to the date of the filing of the claim for refund, or from the date of the payment of the tax on property subject to an application for equalization of the assessed value thereof to the date of the determination of the equalized value of the property; provided, however, that no interest shall be paid under the provisions of this section if such period of time is 30 days or less.

"The interest charged shall be apportioned to the appropriate funds, as determined by the county auditor."

Current section 5151 was derived from former section 5108.

Section 5141 stated:

"If the court finds that the assessment complained of is void in whole or in part, it shall render judgment for the plaintiff for the amount of the taxes paid on so much of the assessment as is found to be void. In such event but only where taxes are paid after the effective date of this act, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate per centum per annum equal to the rate per centum per annum that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes from the date of payment under protest to the date of entry of judgment, and such accrued interest shall be included in the judgment. The taxes paid on so much of the assessment as is not found to be void shall constitute valid taxes which, if paid after delinquency, shall carry penalties, interests and costs."

Current sections 5144 and 5150 were derived from former section 5141.

<sup>8</sup>Former section 5105 is inapplicable to the case at bench because it entitles a taxpayer to interest only on a refund obtained by court order and

(82 Cal. App. 3d 320)

conclusion that a taxpayer's entitlement to interest is provided for generally. Under the doctrine of "the expression of one excludes the other" the failure of the Legislature to provide expressly for the payment of interest on certain refunds while expressly providing for such payment on other refunds indicated an intention to exclude from the omitted refunds the obligation of interest. (*Hill v. City of Eureka* (1939) 35 Cal. App. 2d 154, 158 (94 P. 2d 1025); *County of Madera v. Superior Court* (1974) 39 Cal. App. 3d 665, 670 (114 Cal. Rptr. 283).)

(6) These sections also reveal a comprehensive legislative plan which authorizes recovery of interest on a tax refund only where the county, *with notice of an improper assessment*, has failed to grant a tax refund.<sup>9</sup> Under these sections interest is denied on tax refunds unless and until the county receives notice of its error—notice given by re-

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no resort to court action was required here in order that the taxpayer might recover her refund. The erroneously collected tax payments were promptly refunded by the County upon the filing of her application for exemption.

Former section 5108 is inapplicable because it entitles a taxpayer to interest only on refunds that result from a reduction in assessed valuation following an application for equalization by a board of equalization or by a court action to recover taxes. The refund here was based upon an application for exemption rather than an application for equalization and was granted by the County rather than a board of equalization or court.

Finally, former section 5141 is inapplicable because this section entitles a taxpayer to interest only where taxes were paid under protest and are later found by a court to be the result of a void assessment. The tax payments here were neither made under protest nor refunded by court order.

<sup>9</sup>This legislative plan is continued in the recently enacted sections derived from the former sections of the Revenue and Taxation Code discussed above. (Sections 5150, 5151.) The importance of notice in the legislative plan is also seen in the requirement that a tax refund claim must be presented to and denied by the County before a court action for refund may be legally commenced. (Sections 5140, 5141, 5142, former Sections 5103, 5104; *Signal Oil & Gas Co. v. Bradbury* (1960) 183 Cal. App. 2d 40, 43-56 (6 Cal. Rptr. 736).)

fund claim, application for equalization, or payment under protest. Interest does not begin to accrue under former section 5105 until "the date of the filing of the claim for refund." Interest accrues pursuant to former section 5108 from "the date of the payment of tax on property subject to an application for equalization of the assessed value" and not even then if the property is reassessed within 30 days. Former section 5141 authorized payment of interest "from the date of payment under protest."

Ball is denied interest on her tax refund under such a plan because she received her refund shortly after she presented her application for exemption to the County—shortly after the County had been given notice that these taxes had been erroneously collected from her.

This plan is fair. The tax payments at issue were apparently collected by mutual mistake. Neither Ball nor the County seem to have been aware of the applicability of the exemption. (7) Even where money has been improperly paid by one *private party* to another under a mutual mistake, interest will not begin to accrue until the mistake is discovered and a demand for restitution made. (Rest., Restitution, Section 156, com. a, p. 619; 45 Am. Jur. 2d, Interest and Usury, Sections 88, 90, pp. 79-81; *Anderson v. Pacific Bank* (1896) 112 Cal. 598, 603 (44 P. 1063); *Bank of China v. Wells Fargo Bank & Union Trust Co.* (9th Cir. 1953) 209 F. 2d 467, 472.) Interest is not

(82 Cal. App. 3d 321)

recoverable until and unless an individual has notice of his duty to make restitution.

(8) This rule applies with even greater force to funds erroneously held by *the government* due to the extent and nature of governmental activities. Indeed, where the government owes a *liquidated claim* upon a *definite date* that claim *does not draw interest until demanded* based "on the consideration that it would be inconvenient and burdensome for the officials of a municipality (or county) to seek its creditors and tender payment of their claims, and also that it would be oppressive and unjust to permit

creditors of a municipality (or county) with good credit to turn claims into investments through omitting to present them and then collecting interest thereon." (56 Am. Jur. 2d, Municipal Corporations, Counties, and other Political Subdivisions, Sections 833, 842, pp. 823-824, 828; *South Yuba Water Co. v. Auburn* (1911) 16 Cal. App. 775, 780 (118 P. 101); *Engebretson v. City of San Diego* (1921) 185 Cal. 475, 479 (197 P. 651).) Even in jurisdictions which have adopted the rule that the state has an implied contract to pay interest for the use of tax funds which are eventually refunded, interest does not begin to accrue until the taxpayer puts the state on notice that tax payments have been erroneously collected by making a demand for a refund. (*Girard Trust Co. v. City & County of Philadelphia* (1948) 359 Pa. 319 (59 A. 2d 124, 127-128) *Van Hise v. Board of Sup'rs* (1897) 21 Misc. 572 (48 N.Y.S. 874, 879) overruled on other grounds, 26 Misc. 750 (57 N.Y.S. 281, 288); *Atwell v. Zeluff* (1872) 26 Mich. 118, 119-120; *Boston and Sandwich Glass Co. v. City of Boston* (1842) 45 Mass. 181, 190.)

#### DISPOSITION

The summary judgment for the County of Los Angeles is affirmed.

Allport, J., and Potter, J., concurred.

#### APPENDIX C

#### SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

HELEN BALL, individually and on )  
behalf of all others similarly )  
situated, )  
Plaintiff, )  
v. )  
COUNTY OF LOS ANGELES, )  
Defendant. )

NO. CA 000 289.

#### ORDER DISMISSING COMPLAINT AND FOR ENTRY OF SUMMARY JUDGMENT IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF

The motion of defendant County of Los Angeles for an order pursuant to Section 437(c) of the Code of Civil Procedure dismissing the complaint herein and entering judgment for defendant was regularly heard on February 3, 1977. Charles J. Moore, Deputy County Counsel, appeared as attorney for defendant, and Volney F. Morin and Volney F. Morin, Jr., appeared as attorneys for plaintiff. The Court finds that there is no triable issue of fact and that the action has no merit.

IT IS ORDERED that the complaint is dismissed and that judgment be entered in accordance with this order in favor of the County of Los Angeles and against Helen Ball as

requested in the Answer to the Second Amended Complaint.

Dated: January 3, 1977. \*

/s/ CAMPBELL M. LUCAS  
Judge of the Superior Court

\* Clerical error dated order January 3, 1977 instead of February 3, 1977, the date of hearing.

## APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT NO. 59  
HON. CAMPBELL M. LUCAS, JUDGE

HELEN BALL, individually and on )  
behalf of all others similarly )  
situated, )  
Plaintiff, )  
vs. )  
COUNTY OF LOS ANGELES, )  
Defendant. )

NO. CA 000,289

REPORTER'S TRANSCRIPT ON APPEAL  
Thursday, February 3, 1977

APPEARANCES:

For the Plaintiff: VOLNEY F. MORIN, SR.  
VOLNEY F. MORIN, JR.  
For the Defendant: JOHN H. LARSON,  
COUNTY COUNSEL  
By: CHARLES J. MOORE,  
Deputy

Page 1  
LOS ANGELES, CALIFORNIA  
THURSDAY, FEBRUARY 3, 1977  
A.M. SESSION

THE COURT: Good morning, gentlemen.  
(All counsel respond, "Good morning.")

THE COURT: Ball vs. County of Los Angeles.

Your appearances, please?

MR. MOORE: Charles Moore, Deputy County Counsel, on behalf of the County.

MR. MORIN, JR.: Volney F. Morin, Jr. for Helen Ball and the other plaintiffs.

MR. MORIN, SR.: Volney F. Morin, Sr., for Helen Ball and all the other individuals similarly situated.

THE COURT: Counsel, I think in reading the moving papers and the papers in opposition, that there is no dispute over the facts of the matter, and this really turns on the question of law.

Is that correct?

MR. MOORE: Yes, Your Honor.

MR. MORIN, JR.: Yes, sir.

THE COURT: I have read the moving in opposition papers. And do you wish to argue, Mr. Moore?

MR. MOORE: Your Honor, I would reserve my opening argument. I believe that I would like to rely on my moving papers at this time, and of course, answer any questions you have.

THE COURT: All right, Mr. Morin?

MR. MORIN, JR.: I would only like to supplement the

Page 2

papers that we have supplied in opposition by bringing the court's attention to Civil Code 437(c), and remind the court perhaps that the County has a burden to show that the action has no merit and that they are entitled to a judgment as a matter of law.

That was not discussed in my memorandum in opposition, but I feel strongly that the action does have merit, and they are not entitled to a judgment as a matter of law.

THE COURT: Do you wish to add anything, Mr. Moore?

MR. MOORE: I'll apologize for the absence of the reply brief. I received the opposition on Monday, and I didn't feel I would be giving the court enough time to submit a reply.

The only point raised in the opposition papers concerns the law of the case doctrine. The points and authorities have

indicated that since this matter has been the subject of a hearing, the County demurred and the demurrer was overruled, the law of the case doctrine applies, and I would wish to merely point out to the court that as far as the law of the case doctrine, the effect of the First Appellate decision on all subsequent proceedings, it is the rule which requires the trial court to follow that rule which has been laid down by the Appellate Court on former appeals.

It is the County's position that the application of the law of the case doctrine is inappropriate in this case and that surely we're entitled to judgment at this point, notwithstanding the fact that we have demurred and the demurrer was overruled.

Page 3

THE COURT: Thank you.

As I understand the papers, gentlemen, we have a situation where by statute it is provided that if you bring a lawsuit for the recovery of taxes and any interest or penalties that may have collected pursuant to those taxes, that you can recover interest if you are successful in the lawsuit.

But where there is merely a reimbursement by the County, there is no statutory provision for the payment of interest; that in a nutshell, the circumstances, the present state of the statute, leaving aside for the moment the dispute about whether or not the word "taxes" includes interest, that would be claimed, that is, the interest for the use of the money by the County.

MR. MORIN, JR.: Your Honor, I think the statutes are not clear in that regard.

THE COURT: Let's talk about that. If you bring a lawsuit, there is a clear statute that if you sue for the return of taxes paid, or penalties paid, or imposed for failure to pay, that you can get that back with interest, if you go through the court system.

MR. MORIN, JR.: I believe that is the case.

THE COURT: But if you just make an application for refund, there is nothing in the statute about the interest for the time the County has held the money, other than the

discussion that has been had about the definition of "taxes."

MR. MORIN, JR.: Other than that, but I think you're overlooking that definition and this is very important, so

Page 4

you really can't consider it separately from that definition.

THE COURT: All right, just as long as I understand the basic situation because my ruling is going to be to grant the motion for summary judgment.

I don't have the power that the Supreme Court has to make new law, as they often do.

MR. MORIN, JR.: Have you considered the fact that this is really an action for the recovery of taxes and interest, and it was characterized as such by Judge Fainer in the Municipal Court?

THE COURT: I have considered it, but I don't agree with your interpretation that this is an action to recover interest in the sense that "interest" is used in the definition of "taxes."

My interpretation is, if as a part of the taxes collected there has been an imposition by the County of penalty and interest, that interest which has been paid to the County would be recoverable. Interest for the use of the money is a different situation, and in the court's mind does not fall within that definition.

MR. MORIN, JR.: You're referring to Civil Code 1915?

THE COURT: No, I'm referring to the Revenue and Taxation Code section that defines taxes to include interest, penalties, and costs.

MR. MORIN, JR.: It is your opinion that the definition applies only to penalties, interest, and costs collected by the County?

THE COURT: That's correct.

Page 5

MR. MORIN, JR.: Is that decision supported by any legislative opinion or anything of that type?

THE COURT: You are the one that is supposed to supply points and authorities. In the absence thereof, I have to make my own decision on that.

MR. MORIN, JR.: That's exactly the point,

THE COURT: I was really going to say when you sue to recover taxes, it implies to me that is something that you have already paid, and you have paid interest as a part of that tax.

The interest that you're suing for is something over and above the taxes. It is something that the class claims they are entitled to by reason of the County's use of the money, and that is unrelated to the question of whether the County had collected for taxes or otherwise, because the County has never in fact collected that money.

Also the court is looking at the situation where the Legislature has restricted action specifically with regard to lawsuits, and the specifically passed legislation indicates you may recover interest to the time the County retained this money, if you are successful in a lawsuit.

In the absence of any further legislation, that is a question for the Legislature to take up. There appears to be no provision for the County paying interest on taxes that have not been recovered in a lawsuit.

As I think is obvious, the whole reason for this proceeding today is to shortcut a lot of expensive discovery and preparation for a fullblown class action and perhaps get

Page 6

a determination on the question of law that would clear it up for everyone.

My granting the motion is going to clearly frame that question of law for you. Then it is going to be up to the Appellate Court as to how they look at it.

So with that explanation of the court, the court will grant the motion in favor of the defendant County against the individual plaintiff, Helen Ball.

MR. MORIN, JR.: May I please make a statement, Your Honor?

THE COURT: Yes.

MR. MORIN, JR.: First of all, with respect to the issues being raised on demurrer in the court below, the County has raised the same point in the Municipal Court, and the Superior Court, relative to this action, and in both cases the demurrer was overruled and the judge that decided that

question ruled that the County did have the authority to refund taxes and the term included penalties and costs under the Revenue and Taxation Code 1507 and also 5143.

The fact of the matter is that the County of Los Angeles does collect penalties for delinquent payments of taxes, and the collection for that extra money is because the payment was not made on time, and I think the underlying reason, I am sure, is that the taxpayer has the use of his money, which rightfully should be the County's.

THE COURT: Mr. Morin, I have considered these matters. Please keep in mind you're arguing after the decision.

And I'm going to indicate I see a considerable

Page 7

difference from a situation where a taxpayer pays a tax under duress or coercion, and perhaps pays it under protest, but nonetheless has to pay it, and a situation such as Mrs. Ball's, where there was no need to ever pay the tax, if she properly had filed her exemption. The fault lies with her rather than the County.

MR. MORIN, JR.: Helen Ball paid her taxes, as all County taxpayers must, upon the pain of forfeiture in order to retain her property.

THE COURT: At that time didn't she have a right to an exemption because that property was being used by a free public library?

MR. MORIN, JR.: Indeed, she did.

THE COURT: And if she had filed her claim or exemption, certainly she wouldn't have had to pay the tax.

This is a different situation than where you pay the tax and then challenge the constitutionality of the tax and then you find that the constitutionality of the tax was at fault, and it was an illegal tax.

This tax, in the court's opinion, would never have been collected, and the money would never have been held by the County, and the County would never have had the use of it, if Mrs. Ball had done what the law gives her a right to do, namely to say to the County, "I don't owe you any money because it is exempt."

MR. MORIN, JR.: I recognize that, and I recognize your opinion, and I'm merely trying to frame in my mind, and perhaps for the benefit of any reviewing court, the arguments that we

Page 8

presented in our opposition to the County's motion for summary judgment.

It occurs to me that the underlying basis of our claim, and I feel very strongly about it, is that the County collected the penalties from the taxpayer, and had the use of the money, when it should not have been the County's.

I don't think it's fair, and I think that equitable principles should apply, and the County should pay interest when the County collected money from the taxpayer which it was not entitled to, just like the taxpayer pays interest when it doesn't pay the County the money that is due the County.

In this case the County has had the use of the taxpayer's money, and the taxpayer is receiving no interest for such use.

We're not asking for any punitive damages or for anything by way of mistake or fraud or duress or anything of that sort. We're merely talking about the compensation for the use of the money, and the case law in California has not been developed in this point, and the case law in the majority of the other jurisdictions is clear where the Government has the use of the taxpayer's money, that interest is due the taxpayer.

THE COURT: Well, Mr. Morin, you mentioned equitable considerations and fairness. I don't believe your complaint is framed for equitable relief. As I understand it, it is just a complaint for damages. There is no inadequate remedy at law here, and I'm not sitting as a court of equity,

Page 9

particularly when I'm just looking at a point of law.

Your suit was for damages, not for equitable relief.

MR. MORIN, JR.: It is clear that we are seeking money damages, but I think equitable principles apply in this case,

and I fail to see how the court failes to consider principles of fairness and fair treatment under the law.

I'm also moving on to a different point. I believe that the counsel has not proven the action has no merit or that they are entitled to a judgment as a matter of law. They did not meet the requirements of CCP 437(c).

THE COURT: Well, we have all agreed that there is no triable issue of fact, and the right of interest for your client depends on a question of law. It turns on a question of law, yes or no.

MR. MORIN, JR.: Well, where do we go from here?

THE COURT: I believe your clients have no right under the present state of the law. It doesn't mean that the Legislature cannot change the law, and it doesn't mean that the Supreme Court cannot change it, but I have to make my ruling under the law as it now stands, and I have made that ruling.

I don't believe there is anything left in the case than considering the matter on appeal.

MR. MORIN, JR.: All right, Your Honor, thank you very much.

THE COURT: I thought when we had our informal conference earlier that is what we were really looking at, to see

Page 10

if we could  
get a determination on it, not necessarily a binding one for  
me or Judge Fainer or Judge Phillips, but from an Appellate  
Court, which decision would have some teeth in it.

Certainly, you are entitled to go on from here and take the matter up on appeal.

But the fact that a demurrer has been sustained doesn't prevent other demurrers from being brought. It doesn't prevent a motion for judgment under the pleadings, and it doesn't prevent a summary judgment motion, and it doesn't prevent the matter from being raised on appeal.

You are going to have something in your favor if you can say there was a split on the Superior Court level, but really this is an Appellate Court question.

So all I can do is give both sides my blessing and say some day we will have it resolved.

Is notice waived, counsel?

MR. MORIN, JR.: Yes

MR. MOORE: Yes, Your Honor.

THE COURT: Thank you, gentlemen.

## APPENDIX E

2nd Civil No.  
52206

### IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

HELEN BALL, individually and on )  
behalf of all others similarly )  
situated, )  
Plaintiffs and APPELLANTS, )  
vs. )  
COUNTY OF LOS ANGELES, )  
Defendant and RESPONDENT. )

#### APPELLANTS' OPENING BRIEF

#### STATEMENT OF THE CASE

#### RELIEF SOUGHT

Appellant, Helen Ball, for herself and for all others similarly situated, seeks reimbursement from County of Los Angeles (County) for use of her and their money.

Appellant, Helen Ball, for herself and for all others similarly situated asks that the ORDER DISMISSING COMPLAINT AND FOR ENTRY OF SUMMARY JUDGMENT in favor of defendant, County, of the Honorable Campbell M. Lucas, dated February 3, 1977 be vacated, and that this Court determine that the County does have authority under the California Revenue and Taxation Code to reimburse taxpayers for the use of their money; that this Court

Page 2

ORDER County to reimburse (pay interest to) taxpayers for the use of their money due to an overpayment of tax, because of an improper assessment or for any other reason taxpayer has overpaid taxes to County; and that this Court ORDER said reimbursement be compounded annually from the date claims for refunds accrued to date of payment, and thereafter pay interest on the interest, which had not been paid. Appellant, Helen Ball, for herself and for all others similarly situated, asks that this class action be returned to Los Angeles Superior Court for completion of the trial.

Judgment or Ruling of the Superior Court sought to be vacated, is attached as Exhibit 1.

#### NATURE OF THE ACTION

County sent Helen Ball a Secured Property Tax Bill (Bill) which she paid. Thereafter she discovered the Bill had been sent, and payment thereof had been made, erroneously. She requested, and obtained, reimbursement of the money she paid; she requested but was denied, reimbursement for use of the money she paid.

It does not matter whether the reimbursement she seeks is considered to be interest, or penalty, or costs. The California Legislature has stated, and then restated, that all three words are included under the generic term "taxes". Part 9, chapter 5 of California Revenue and Taxation Code governs refunds of

Page 3

taxes. Both Article 1, Refunds Generally, Section 5107 (1941) and Article 2, Payment Under Protest and Suit to Recover, Section 5143 (1941), state: "As used in this article, 'tax' or 'taxes' includes penalties, interest, and costs."

It is clear the California Legislature has twice spoken and each time, in identical words, it has expressed its intention that refunds of taxes includes refunds of taxes, penalties, interest, and costs. The taxpayer is to be made whole.

For over one hundred years California law has recognized that: "Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money." (Civil Code Section 1915; enacted in 1872 and amended by Code Amendments Ch 612 Section 202 P245 (1873-1874) to read as at present.)

The County charges and collects money for delinquent taxes - presumably under the theory expressed in Civil Code Section 1915 and specifically authorized by Revenue and Taxation Code Sections 2617, 2618, 2704 and 2705. That is, the taxpayer has use of his money and the County has to forbear the use of the taxpayer's money. Money is collected for delinquent taxes by County even though there has been no action in which the recovery of taxes is allowed by the court pursuant to Revenue and Taxation Code Section 5105.

The subject of the right of a taxpayer to collect interest on a tax refund is annotated in 57 A.L.R. 347, 76 A.L.R. 1012 and 112 A.L.R. 1183. While there is some minor conflict

#### Page 4

among the authorities on this issue, it appears from these annotations that a majority of jurisdictions do permit recovery of interest by a taxpayer.

#### SUMMARY OF MATERIAL FACTS

County has denied the claim of Helen Ball. (See attached Exhibit 2, letter dated October 24, 1975, from County of Los Angeles Department of Auditor-Controller.) County continues to deny the claim of Helen Ball and all other taxpayers similarly situated for reimbursement for County's use of their money, by raising two arguments:

1. The County has no authority, and
2. The County's authority is strictly regulated by the Revenue and Taxation Code.

#### COUNTY HAS AUTHORITY TO PAY INTEREST

County demurred in earlier proceedings in this case in the Municipal Court on the grounds it lacked authority to pay interest - the same grounds advanced below. On July 2, 1975, the Honorable Robert Fainer, sitting in Law and Motion, ruled:

"The demurrer of the defendant, County of Los Angeles, to the complaint is over-ruled. The County of Los Angeles has the authority to refund "taxes" and the term "taxes" as used in Revenue and Taxation Code Sections 5107 and 5143 includes penalties, interest and costs. This is not an action to determine the legality

#### Page 5

of any tax, but is an action to recover the balance of taxes due after a refund, to wit, the interest thereon."

Notice of Judge Fainer's Ruling, and Proof of Service By Mail, dated December 2, 1975, were filed on December 3, 1975.

From Judge Fainer's ruling, County did not appeal.

The ruling in the Municipal Court in favor of Helen Ball, was based on the same code sections; the same issues; the same arguments; and the same facts as are now before this court.

On November 10, 1975, the Second Amended Complaint for Damages, which commenced this class action, was filed.

On December 9, 1975, the Clerk of the Superior Court mailed his Notice of Transfer of Action, from the Municipal Court to Superior Court.

On January 14, 1976, County demurred once again. This time to the Second Amended Complaint and the present class action.

Said demurrer was opposed by appellant and in the Points and Authorities in support of such opposition, Revenue and Taxation Code Section 5107 and Section 5143

were fully discussed. In appellant's Supplement to Memorandum in Opposition to Demurrer, and Points and Authorities in support thereof, the ruling of the Honorable Robert Fainer, referred to above, was discussed in full, so as to make certain his ruling was a part of the record herein.

On February 2, 1976, in Department 84, the Honorable Charles H. Phillips presiding, the demurrer of the County was

Page 6

overruled, the Court saying: "General demurrs overruled on the merits per the points and authorities and the reasons stated by Judge Fainer."

From Judge Phillips' ruling, County did not appeal.

#### EARLIER RULINGS IN THIS CASE SHOULD BE FOLLOWED

It is respectfully submitted that the rulings of Honorable Robert Fainer and Honorable Charles H. Phillips should be followed by this Court, under the theory of the Law Of The Case.

"A decision which determines the rights of the parties under a given state of facts becomes the law of that case and is not subject to revision on a later appeal, even though the prior decision is admittedly erroneous. Dewey v. Gray 2 C 374; Phelan v. San Francisco 20 C 39. Indeed, it is when the former rule is deemed erroneous that the doctrine of the law of the case becomes most important..." People v. Holladay 93 C 241, 29 P 54; Tally v. Ganahl 151 C 418, 90 P 1049; Westerfeld v. New York Life Ins. Co. 157 C 339, 107 P 699; Union Oil Co. v. Reconstruction Oil Co. 58 CA2d 30, 135 P2d 621."

and

"The law of the case is not less binding upon the courts and the parties because questions of great public interest are involved such as, for instance, may be affected by the construction of an act of Congress. Leese v. Clark 20 C 387 (Mexican Land Grants confirmed by Congress). While the importance of the questions involved should induce a careful consideration in the first place, it can have no effect upon the conclusiveness of a decision once made. Leese v. Clark 20 C 387; Blatz Brew. Co. v. Collins 88 CA2d 438, 199 P2d 34." 4 Cal. Jur. 2d Section 699

and

"It follows that an announced principle which is the law of the case must be adhered to and observed throughout the subsequent progress of the case both in the lower court and upon subsequent appeal, although the appellate court believes upon further consideration that the former decision in that particular is erroneous, Burns v. Jackson 53 CA 345, 200 P 80; George v. Los Angeles 51 CA 2d 311, 124 P2d 872; and this rule will be uniformly followed unless there are unusual circumstances leading to injustice or unfairness. Allen v. California Mut. Bldg. & Loan Assn. 22 C2d 474, 139 P2d 321. The law of the case doctrine is not limited, however, to cases in which the first decision is deemed erroneous. The principle is equally applicable where the prior decision is unquestionably correct..."

5 Cal. Jur. 3d Section 641.

Courts are charged with responsibility of interpreting laws enacted by the legislative branch of the government.

And when a court interprets a law, then a county has whatever power a court says it has. If it is to pay interest under the law, then a county has authority to pay interest.

This Appeal is advanced on the premise that all parties before a court of law are entitled to equal treatment under the law. The XIV Amendment to the United States Constitution provides at Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

Page 8

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A County government and an elderly widow must abide the same rules and are entitled to the same rights and privileges.

Helen Ball advances for herself and for all other taxpayers similarly situated, the proposition that if County charges and collects money (interest) for delinquent payment of property taxes, then County must refund money (interest) when it has use of taxpayers' money due to an overpayment of tax.

The Honorable Learned Hand declared in Proctor & Gamble Distributing Co. v. Sherman 2 F. 2d 165, 166 (D.C.N.Y. 1924):

"...it is not an adequate remedy, after taking away a man's money as a condition of allowing him to contest his tax, merely to hand it back, when, no matter how long after, he established that he ought never to have been required to pay at all."

The facts in the case of Helen Ball are not in dispute.

Helen Ball does not claim for herself or any other taxpayer that a penalty should be assessed against the County of Los Angeles for any willful or improper conduct.

Instead, her claim is based on the argument that Civil Code Section 1915 provides the underlying basis for interest. Revenue and Taxation Code Section 5107 and Section 5143 authorize the County to pay interest on taxes which were improperly assessed, and thereafter paid, with or without protest, and this Court should order the

Page 9

County to do that which it is unwilling to do - treat the taxpayers in the same way it demands it be treated.

#### CALIFORNIA STATUTORY LAW

California law regulating the imposition of real property taxes is primarily statutory, currently codified for the purposes of this brief in the Revenue and Taxation Code Sections 1-36, 101-134 (general provisions), 290-900 (assessment), 1601-2125 (equalization), 2501-2862 (collection), and 4801-5161 (corrections, cancellations, and refunds).

The history of the California property tax is one of recurring cycles of abuse and reform. Ehrman and Flavin, Taxing California Property: Assessment, Equalization and Collection, ch. 1 (1967) (hereafter Ehrman and Flavin). The last major reform was in 1966. Id. Section 27. This was designed to remove a "cloak of mystery which surrounds the processes of assessment and equalization and to provide remedies for unequal assessment." Id. Sections 27-44. The relevant statutes were enacted at various times, mostly in 1941 and 1955, but a liberalizing section on refunds, Revenue and Taxation Code Section 5108, was enacted in 1970.

In general, assessments are performed by assessors in the counties. Revenue and Taxation Code Section 404. Essentially "assessment" means establishing the value of the property. Ehrman and Flavin, *supra*, Sections 184-185. The State Board of Equalization provides regulations to govern assessors, Government Code Section 15606,

and publishes  
the Assessor's Handbook for the use of assessors. Ehrman  
and Flavin, *supra*, Section 430.

"Equalization" means the adjustment of individual assessments so that one taxpayer is not taxed at a greater proportional rate than another. Ehrman and Flavin, *supra*, Section 440. The California Constitution provides both for county boards of equalization, CAL. CONST. art. XIII, Section 9, and for the state board, CAL. CONST. art XIII, Section 9.5. The constitutional provisions are implemented by provisions in the code relating to the county board of supervisors, acting as the county board of equalization, Revenue and Taxation Code Sections 1601-1615, and by local assessment appeals boards, Revenue and Taxation Code Sections 1620-1629, Sections 1750-1765. Ehrman and Flavin, *supra*, Section 440. County employs an assessment appeals board, Id. Section 475, and Los Angeles County equalization procedures are governed by special code provisions. Revenue and Taxation Code Sections 1760-1764.

Revenue and Taxation Code Section 5105 states:

Recovery of interest.

In any action in which the recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate per centum per annum equal to the rate per centum per annum that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes from the date of the filing of the claim for refund to the date of entry of judgment, and such accrued interest shall be included in the judgment. This section shall not apply to taxes paid before the effective date of this act.

(Added Stats 1941 ch 664 Section 10;  
Amended Stats 1961 ch 2151 Section 1.)

It should be remembered that the word "taxes" as used in

Section 5105 includes "penalties, interest and costs" (Section 5107). Hence, in one relevant part, Section 5105 could reasonably be accurately restated:

"In any action in which the recovery of penalties, interest and costs is allowed by the court, the plaintiff is entitled to interest on the interest and costs for which recovery is allowed...."

Section 5105 is applicable for the reason that the instant case is an action for the recovery of "taxes" as defined in Section 5107.

Section 5105 deserves still closer consideration, having in mind that it comes under Chapter 5, Refunds, and Article 1, Refunds Generally, and was enacted in 1941. Clearly the legislature was attempting to fill the void which would occur if a taxpayer obtained a judgment of recovery and was left to receive interest only from the date of judgment, as is the usual case. Here, the legislature seeking to redress that possible wrong said the plaintiff would recover interest "...on the amount allowed and recovered as taxes from the date of filing of the claim for refund to the date of entry of judgment..."

It is the position of Helen Ball that the meaning of Section 5107 and in haec verba Section 5143, ("As used in this Article, 'tax' or 'taxes' includes penalties, interest, and costs.") is clear from a plain reading.

The Municipal Court and the Superior Court had no trouble determining the meaning of these sections. The Honorable Robert Fainer (with the Honorable Charles H. Phillips later concurring) held that: "The County of Los Angeles has the authority to refund 'taxes' and the term 'taxes' as used in Revenue and Taxation Code Section 5107 and Section 5143 includes penalties, interest, and costs."

Revenue and Taxation Code Section 5108 was added to the Code in 1970 and is thus a later section than any other, in both Articles 1 and 2 on Refunds. This section provides:

Interest at the rate of 6 per cent per annum  
shall be paid, when such interest is ten

dollars (\$10) or more, on amounts refunded . . . as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes . . .

Interest allowed under this section shall be computed . . . from the date of the payment of the tax on property subject to an application for equalization of the assessed value thereof to the date of the determination of the equalized value of the property; provided, however, that no interest shall be paid under the provisions of this section if such period of time is 30 days or less. (Emphasis added)

Section 5108 is helpful in the case of Helen Ball because it points to a liberalization of statutory law in the area of interest on refunds. As will be discussed next, California case law is less illuminating on the matter of Helen Ball.

Page 13

#### CALIFORNIA CASE LAW

There is no current California case law that deals with the question of whether a taxpayer is entitled to interest on tax refunds. The inclusion of Revenue and Taxation Code Section 5141 in 1941 (still in force) invalidates earlier decisions.

California courts have not decided a case involving interest on refunds under its modern tax code. Because the question has not been considered in recent years, it is still open.

California case law applies primarily to cases where the amount of tax is calculated by the taxpayer and not where the taxes are collected by error in the levy or collection process. Also, most cases deal with a common fact situation where the action was brought under Political Code Section 3819 - not the case of Helen Ball.

The first case, and a very early one, in which California

courts spoke of a right to interest on property tax refunds was Savings and Loan Society v. City and County of San Francisco, 131 Cal. 356, 63 P. 665 (901), which was concerned with taxes on personal property, also taxed in the same manner as realty. The court refused to allow interest from the date of the payment of the tax under protest, holding as to the relevant Civil Code sections:

The code sections cited relate to interest as compensation or damage between parties to an action, and the language of the statute is general and does not include the state or any

Page 14

of its political subdivisions. The state is not bound by general words of a statute which would operate to establish a right of action against it . . . The action here is brought under a new section of the Political Code - 3819 - in which no provision is made for the payment of interest.

131 Cal. at 363 (citations omitted). The case is distinguishable, of course, on the grounds that the cause of action in the case of Helen Ball is based on entirely different grounds than Political Code Section 3819, and this case precedes Revenue and Taxation Code Section 5107 and Section 5143 by forty years.

The next following California cases discussed also precede enactment of Revenue and Taxation Code Section 5107 and Section 5143, and are based on Political Code Section 3819.

In another early case, Columbia Savings Bank v. County of Los Angeles 137 Cal. 467, 70 P. 308 (1902), involving the taxation of personal property (bonds), the court held on general principles of equity that interest was owing from the date of judgment. The court held:

(The taxpayer) is entitled to the return of the money paid under protest, if the tax was illegal. If the tax was legal the county was entitled to payment, and the taxpayer is not injured. In such case there was neither "use, or

forbearance, or detention of money" (Civ. Code, Sec. 1915) prior to findings and judgment that the tax was illegal. The statute under which the payment was made to the defendant does not provide for the payment of interest, nor was any money due thereon from the defendant until its liability was fixed by the judgment of a court of competent jurisdiction. Nor was this a loan of money by the plaintiff to the defendant, which would be presumed to be made upon interest,

Page 15

unless otherwise stipulated at the time in writing, as provided in section 1914 of the Civil Code. Whether, if it were shown that the defendant made a profit out of the money paid to it under said statute, the plaintiff would be entitled to damages to the extent of such profit, not exceeding the legal rate of interest, is a question not presented and not considered. But the judgment in the case before us fixed the liability of the defendant, and from that date the money to which the plaintiff was entitled was detained from it, and natural justice, as well as the statute which provides that interest at seven per cent is payable on judgments recovered in the courts of this state, justifies the judgment relating to interest. (Civ. Code, Sec. 1920); . . . .

137 Cal. at 471 (emphasis added).

This case is helpful but not controlling because in the case of Helen Ball it was not necessary to obtain a judgment ordering a refund. It was so clearly evident that a refund was justified that County refunded the improperly assessed tax without need for a trial.

The results of changes in the taxing statutes were reflected in Wells Fargo and Co. v. City and County of San Francisco, 25 Cal. 2d 37, 152 P. 2d 625 (1944). The trial

court awarded interest and the award was affirmed on appeal because the attack on the judgment was collateral in nature. The court stated:

It is well settled that in an action to recover taxes paid under protest under Section 3819 of the Political Code, interest cannot be allowed from the time of payment but only from the time of the adjudication declaring the money due. 1.

1. Rev. & Tax. Code, Section 5141, enacted in 1941, provides for interest from the date of payment under protest, as to taxes paid after the effective date of the section.

Page 16

25 Cal. 2d at 43. Again, the including of Revenue and Taxation Code Section 5141 (still in force) invalidates earlier decisions.

No cases subsequent to the enactment of the provisions of the modern code sections have been uncovered which speak of the right to recover interest in cases involving real property taxation.

#### SUPREME COURT AND FEDERAL CASE LAW

The Supreme Court of the United States has recognized for over 100 years that: ...Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction." Erskine v. Van Arsdale, 15 Wall. (U.S.) 75, 77 (1872). See also: Redfield v. Bartels, 139 U.S. 694, 11 Sup. Ct. 683, 35 L.Ed. 310 (1891); National Home v. Parrish, 229 U.S. 494, 496, 33 Sup. Ct. 944, 57 L.Ed. 1296 (1913); Billings v. United States, 232 U.S. 261, 286, 34 Sup. Ct. 421, 58 L.Ed. 596 (1914); State, etc., Co. v. Davis, (D.C.) 228 Fed. 246, 250 (1915); Haiku Sugar Co. v. Johnstone, 249 Fed. 103, 109, 161 C.C.A. 155 (1918); International Paper Co. v. Burrill, (D.C.) 260 Fed. 664, 667 (1919).

In International Paper Co. v. Burrill, *supra*, at page 669, the Court held: "...As the money was wrongfully obtained by the defendant through implied duress, and as it is no defense

Page 17

that the defendant has paid the money into the treasury of the commonwealth, there must be judgment for the plaintiff for the amount of the tax, with interest thereon from the date of payment, May 22, 1916."

Modernly, the "adequacy of remedy at law" issue was raised in Mullaney v. Hess, 189 F. 2d 417 (9th Cir. 1951). Applying Alaska law, the court stated:

We think that the weight of authority is that interest is recoverable on tax refunds in absence of express statutory authority therefor. The reasoning of these cases is in harmony with the modern view they express.

*Id.* at 420.

In 1957 in Ketchikan Spruce Mills v. Kewey, 17 Alaska 336 (1957), the United States District Court for Alaska also permitted recovery of interest under a territorial statute which provided for refund of taxes but made no mention of interest.

#### OTHER STATES CASE LAW

Of all the states, Pennsylvania has the most thoroughly developed case law on the question of interest on refunds of real property taxes. There has, moreover, been an evaluation of principles in that state which will be illuminating in the case of Helen Ball.

The underlying principles were enunciated in the leading and often cited case of Philadelphia and Reading Coal and Iron Co. v. School District of Borough of Tamaqua, 304 Pa. 489, 156

Page 18

A. 75 (1931).

Plaintiff won a judgment that real property taxes for the benefit of the school district had been improperly assessed.

The court held:

One further question raised in argument remains to be determined, whether or not plaintiff is entitled to interest on the amount paid in excess of the proper levy. The judgment as it now stands is for the total excess payment, \$8,547.75, with interest at 6 per cent, from September 21, 1923, the date of payment by plaintiff, the whole amounting to \$12,137.80. The precise point does not appear to have been raised before in this court, and we are thus free to deal with it unhampered by precedent. It is unnecessary to review the wealth of conflicting authorities in other jurisdictions . . . . The weight of authority appears to be that, where the taxpayer is entitled to a refund on an excess payment of taxes, whether such right accrues by virtue of statute or not, the taxpayer is entitled to interest on the refund if no statute or public policy militates against it. Such is the law in the United States courts . . . as well as several other states. . . . With this view we agree.

156 A. at 77 (citations omitted; emphasis added).

In Cities Service Oil Co. v. City of Pittsburgh, 449 Pa. 481, 297 A. 2d 466 (1972), the court discussed the various rules in a context of mercantile license taxes paid for the benefit of a school district. The court's decision appears to be equally applicable to real estate taxes, especially since the whole line of decisions originated with Tamaqua. It was held, in broad and useful language:

If a taxpayer is entitled to a tax refund, he is also entitled to interest on the refund so long as no statute or public policy militates

Page 19

against it, . . .  
The Commonwealth Court, in determining

the date from which to compute the interest due Cities Service, states, ". . . before interest will accrue there must be an improper detention by the taxing authority; and the taxpayer must make a demand for refund. . . However, the taxing authority's detention of the taxpayer's money is not improper until there has been a decision to this effect." . . . We agree that there must be an improper detention and that the taxpayer must make a demand for refund. We disagree that in all cases improper detention commences from the date of a decision to that effect. Rather, we believe that a court can decide that a taxing body has improperly detained the taxpayer's money from a point in time prior to the determination that the detention is improper. . .

Here the taxpayer has asked that interest be computed from the date of payment and demand for refund. Courts in charging and allowing interest need not limit themselves by hard and fast rules but should charge and allow interest in accordance with principles of equity. . . . That the taxpayer's money was improperly detained and demand for refund made should be sufficient to justify a court's exercise of its equity powers. Here, however, the taxpayer paid the taxes promptly once they were assessed; inflation had deteriorated the value of the dollar that was improperly detained by the City and School District; and the City and School District, never having any right to the money, were able to borrow less or invest the money. Since the City and School District benefited from the use of the taxpayer's money, it is only fair that the taxpayer receive simple interest for the period the money was im-

properly detained.

Moreover, if taxing authorities are authorized to collect combined interest and penalties on back taxes to their original due dates (at a rate greater than the simple interest sought here on a refund), we see no hardship in requiring them to pay simple interest on amounts improperly detained from the date of payment and demand.

Page 20

297 A. 2d at 468469 (citations omitted; emphasis added). The equitable principles enunciated in that case should be applied in the case of Helen Ball.

In Byram v. Thurston County, 141 Wash. 28, 251 P. 103 (1926), upon reargument, 141 Wash. 28, 252 P. 943 (1927), interest was allowed on real property taxes illegally assessed and paid under protest. The court referred to an older case which awarded interest but gave no reason for the award:

It is also contended that in any event the interest allowed from the date of the payment of the illegal tax under protest is improper, citing authority from other jurisdictions to the effect that interest is never allowed on illegal taxes sought to be recovered after payment. We seem to have settled this question in this state in the case of Great Northern Railway Co. v. Stevens County, 108 Wash. 238, 183 P. 65, where we gave directions to enter judgment in favor of the company against the county for the amount of the illegal tax, with legal interest from March 6, 1918, the date on which the railway company was compelled to, and did, pay an excessive and illegal tax.

After having examined and considered all the questions raised in the case, we are convinced that the judgment was right.

251 P. at 110. See also Doric Co. v. King County, 59 Wash. 2d 741, 370 P. 2d 254 (1962).

In Arizona, the principal decision is State Tax Commission v. United Verde Extension Mining Co., 39 Ariz. 136, 4 P. 2d 395 (1931), reh. denied, 39 Ariz. 331, 6 P. 2d 889 (1931). The court relied upon statutory authorization for the award of interest but gave as its reason an equitable argument:

Page 21

(I)n reason and logic, when the state compels one of its citizens under the pain of forfeiting all rights of recovery, to pay in advance of suit a sum of money which it is afterwards adjudged was illegally demanded, the same principle of common justice would require that the state, to make the citizen whole, should repay not merely the sum illegally so obtained, but interest from the date the money was paid to it. Were this a case of a small taxpayer, who, in order to maintain his suit, was compelled to borrow money to pay the illegal tax, it would be recognized at a glance that full justice could only be done by repaying to him, not only the sum so paid, but interest thereon, and in principle no difference exists because the taxpayer in this case happens to be a large corporation which presumably had in its treasury the funds to pay the tax.

4 P. 2d at 399. The reasoning of the United Verde case was relied upon in Williams v. Harvey, 91 Mont. 168, 6 P. 2d 418 (1931), which was, however, also a case based primarily on statute. See also Ford Motor Co. v. City of Detroit, 43 Mich. App. 248, 204 N.W. 2d 348 (1973).

In South Dakota, the leading case is Zimmerman v. Corson County, 39 S.D. 167, 163 N.W. 711 (1917). The court spoke of interest in the context of whether an injunction should be issued, a disallowance of interest resulting in "no adequate remedy at law." It was held:

Respondent's suggestion that the remedy is not adequate for the reason that the statute

does not in terms authorize a recovery of interest is without merit. It cannot be doubted that plaintiff should be entitled to interest upon any sum wrongfully collected by the County; nor can we agree with respondent's suggestion that the enforced collection of a tax, unlawful in whole or in part, may result in irreparable

Page 22

injury such as to entitle the plaintiff to a remedy by injunction.

163 N.W. at 713. Likewise in Chicago St. P. M. & O. Ry. v. Mundt, 56 S.D. 530, 229 N.W. 394 (1930), it was held:

It seems to us the fair, just and reasonable rule that, when the sovereign submits itself to suit, unless the statute expressly provides to the contrary, it should come into court on the same basis as to liability for interest and costs, in the event of adverse decision, as any other suitor. . .

. . . Conceding that sovereignty is not subject to suit without its consent, and that a suit to recover taxes paid may be deemed a suit against the sovereign, nevertheless when the sovereign consents to suit it ought not to be given an unfair and arbitrary advantage therein, beyond what is accorded to other suitors similarly circumstanced, unless necessity or the language of a statute so requires. We think Zimmerman v. Corson County announces a rule consonant with justice and supported by many decisions, and we are not now disposed to depart from it merely because it was not treated at more length when announced, or because there is and has been some conflict in the decisions relating to the point.

229 N.W. at 395. See also Chicago and Northwestern Ry. v. Schmidt, 85 S.D. 223, 180 N.W. 2d 233 (1970) (plaintiff entitled to interest but employed erroneous procedure).

In Indiana, the court rejected contractual arguments in a case involving taxes on the receipts of an insurance company and relied on cases of the United States Supreme Court:

(I)n actions to recover back money unlawfully enacted in the name of the state by a public officer, of which the state has had the possession and use, and of the use of which the owner

#### Page 23

has been deprived since it was so paid under compulsion, a different rule has been applied. For many years the Supreme Court of the United States has uniformly held that "in suits against collectors to recover moneys illegally exacted as taxes and paid under protest \*\*\* interest is recoverable without any statute to that effect, and this, although the judgment is not to be paid by the collector but directly from the treasury." Erskine v. Van Arsdale, 15 Wall. (U.S.) 75, 77, 21 L.Ed. 63 (1872). The rule thus adopted is just and equitable and should be followed in the absence of any positive law to the contrary.

Metropolitan Life Insurance Co. v. State, 194 Ind. 657, 144 N.E. 420, 422 (1924) (citations omitted).

An older case, much cited, held under statutory authority that interest should be paid from the date of demand. Boott Cotton Mills v. City of Lowell, 159 Mass. 383, 34 N.E. 367 (1893).

#### CONCLUSION

1. It is the established law of this case that the County has authority to pay interest on refunds.
2. The County has authority to pay interest on refunds

because Section 5107 and Section 5143 of the Revenue and Taxation Code so authorize.

3. There is inadequate and outdated California case law upon which to base a ruling for the specific facts to Helen Ball.
4. The County does collect interest for delinquent taxes; and it should pay for the use of improperly collected taxes.

#### Page 24

5. The majority of State Courts and the Federal Courts, order reimbursement from date of payment, for use of tax money paid in response to an improper assessment, and thereafter subsequently refunded.
6. Helen Ball, and all other taxpayers similarly situated, are entitled to reimbursement for use of their money paid and subsequently refunded.

WHEREFORE, Appellant, for herself and all others similarly situated, prays:

1. That the Superior Court of Los Angeles County ORDER DISMISSING COMPLAINT AND FOR ENTRY OF SUMMARY JUDGMENT dated February 3, 1977 be vacated;
2. This Court determine that Los Angeles County does have authority under California Revenue and Taxation Code to reimburse taxpayers for the use of their money;
3. This Court determine that Los Angeles County and its taxpayers must abide the same rules and are entitled to the same rights and privileges; if County charges and collects interest for delinquent payment of property taxes, then County must be called upon to refund interest when it has use of taxpayers' money due to an overpayment of tax, improper assessment, or any other reason taxpayer has paid too much to Los

#### Page 25

Angeles County;

4. This Court ORDER Los Angeles County to reimburse taxpayer for the use of their money due to an

- overpayment of tax, an improper assessment, or for any other reason taxpayer has paid too much to Los Angeles County, that said reimbursement be compounded annually from the date claims for refunds accrued to date of payment, and thereafter interest on the interest which had not been paid;
5. This class action be returned to the Los Angeles Superior Court for completion of trial;
  6. For such other relief and further order as this Court deems appropriate.

Dated: November 23, 1977.

Respectfully submitted.  
VOLNEY F. MORIN &  
VOLNEY F. MORIN, JR.  
By /s/ Volney F. Morin, Jr.  
VOLNEY F. MORIN, JR.,  
Attorneys for Plaintiffs and  
Appellants

## APPENDIX F

2nd Civil No.  
52206

### IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HELEN BALL, etc., )  
Plaintiff and Appellant, )  
vs. )  
COUNTY OF LOS ANGELES, )  
Defendant and Respondent. )

### PETITION FOR HEARING

TO THE HONORABLE ROSE ELIZABETH BIRD,  
CHIEF JUSTICE, AND TO THE HONORABLE  
ASSOCIATE JUSTICES OF THE STATE OF CALIFOR-  
NIA:

Appellant, Helen Ball, for herself and for all others similarly situated, hereby petitions for a hearing to consider the decision of the Court of Appeal of the State of California, Second Appellate District, Division 3, filed in this action on June 29, 1978, affirming a summary judgment entered in the Superior Court in favor of the County of Los Angeles (County) on her complaint alleging that she is entitled to recover interest on property taxes voluntarily refunded to her by the County. Two trial court rulings prior to the Summary Judgment—

Page 2

overruling demurrers raising the same issue raised by the County's Motion For Summary Judgment, were in favor of Appellant. A copy of

the decision of the Court of Appeal showing the date of its filing is set forth herein as Appendix "A".

Hearing by this Court is necessary to settle an important issue of law. Until Appellant raised the present issue, California courts had not decided a case involving interest on refunds of property taxes under its modern tax code. Because such a case has not been decided, it is timely for this Court to make its decision.

Helen Ball, for herself and for all others similarly situated, asks this Court to determine that:

1. County does have authority under the California Revenue and Taxation Code to reimburse taxpayers for the use of their money;

2. Assuming County does not have express authority under California Revenue and Taxation Code, such authority exists, as a matter of United States Constitutional right and under theory of implied contract;

3. Under either authority this Court should order the County to reimburse (pay interest to) taxpayers for the use of their money, said reimbursement to be compounded annually from the date claims for refunds accrued to date of refund of tax, and thereafter pay interest on the interest until paid;

4. This class action be returned to Los Angeles Superior Court for completion of trial.

Page 3

#### STATEMENT OF SUBSTANTIVE FACTS

Helen Ball owns real property which she leased to the City of Los Angeles as a library materials depository between 1971 and 1974. She received erroneous tax bills from County and paid taxes on the property in each of the three years. Helen Ball subsequently discovered the tax bills were sent erroneously as said property was exempt from taxation under Revenue & Taxation Code Section 202, Subdivision (b) (now Rev. & Tax. Code, Section 202(a)(2)).

Application for exemption from property taxes was filed

on April 10, 1974 and processed and verified by the County between April and July of 1974. Helen Ball requested a refund of taxes erroneously collected and paid, plus interest. The County refunded to Helen Ball the taxes paid without dispute, however, it refused to reimburse her interest for the use of her money.

In its opinion, the Court of Appeal below stated:

"The question presented by this appeal is whether a taxpayer is entitled to recover interest on tax payments erroneously collected by the County on exempt property when the County promptly refunds the erroneous payments upon being put on notice of its error."

(Emphasis added)

It is submitted that the question posed by the Court below is incorrect. While it is true the tax payments were erroneously collected, the payments by the taxpayer were not erroneous. A taxpayer must be able to pay statements for taxes in good faith, upon the expectation that if the statement is incorrect,

Page 4

then the payment made therefor will not only be refunded, but will be refunded with interest. It matters not that the refund is prompt or imprompt. The sole point is that the use of money requires payment for the use of money.

Again, in its opinion filed on June 29, 1978, at page 13, the Court below continued on with its view as to promptness, saying:

"Ball is denied interest on her tax refund under such a plan because she received her refund shortly after she presented her application for exemption to the County — shortly after the County had been given notice that these taxes had been erroneously collected from her." (Emphasis added)

Here again, the fact that the refund was received "shortly" is of no moment. The point, as with promptness, is that whether the refund was received shortly or promptly, after

the taxpayer presented her application, she should have been paid for the use of her money.

#### STATEMENT OF PROCEDURAL FACTS

---

Appellant commenced this action in Los Angeles Municipal Court on May 12, 1975. County demurred on grounds it lacked authority to pay interest; the demurrer was overruled and the County did not appeal. The Honorable Robert Fainer (now Superior Court Judge) presiding, stated:

"The demurrer of the defendant, County of Los Angeles, to the complaint is overruled. The County of Los Angeles has the authority to refund "taxes" and the term "taxes" as used in Revenue and Taxation Code Sections 5107 and 5143 includes

Page 5

penalties, interest and costs. This is not an action to determine the legality of any tax, but is an action to recover the balance of taxes due after a refund, to wit, the interest thereon."

On November 10, 1975 a Second Amended Complaint was filed commencing this class action and was subsequently transferred to Los Angeles Superior Court. County again demurred. In his ruling, Honorable Charles H. Phillips supported Judge Fainer's opinion and denied County's demur-rer.

Upon the suggestion of Honorable Campbell M. Lucas, made to counsel for both parties, in order that legal issues could be ruled upon without first trying the factual issues which seemed not to be in dispute, and in order that the legal issues presented herein could expeditiously proceed thereafter to this Honorable Court, County filed its Motion for Summary Judgment. Said Motion was granted by Honorable Campbell M. Lucas and entered in favor of County.

Helen Ball appealed. Judgment for County was affirmed by the Court of Appeal and filed on June 29, 1978.

#### ISSUES PRESENTED

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##### I

#### CALIFORNIA REVENUE AND TAXATION CODE PROVIDES AUTHORITY FOR COUNTY TO PAY INTEREST

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Petitioner believes that the Court of Appeal has misinterpreted the provisions of the Revenue and Taxation Code

Page 6

which authorizes County to pay accrued interest on tax refunds.

Appellant contends that the Code does provide for the refund of interest under Sections 5107 and 5143.

In its ruling, the Court of Appeal stated:

"A cardinal rule of statutory interpretation is that code sections are not to be read in isolation but construed in context."

Appellant fully agrees. However she disagrees with the Court's contention that when read in context these sections do not define tax as including interest on the return of funds collected from taxpayer.

It is submitted that Civil Code Section 1915 provides the underlying basis for interest; Revenue and Taxation Code Sections 5107 and 5143 authorize County to pay interest on taxes which were improperly assessed, and thereafter paid, with or without protest.

It is the position of Helen Ball that the meaning of Section 5107 and in haec verba Section 5143 ("As used in this Article, 'tax' or 'taxes' includes penalties, interest, and costs."), is clear from a plain reading.

The Municipal Court and the Superior Court had no trouble determining the meaning of these sections. The Honorable Robert Fainer (with the Honorable Charles H.

Phillips later concurring) held that: "The County of Los Angeles has the authority to refund 'taxes' and the term 'taxes' as used in Revenue and Taxation Code Section 5107 and Section 5143 includes penalties, interest, and costs."

Page 7

Revenue and Taxation Code Section 5105 states:

"Recovery of interest.

"In any action in which the recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate per centum per annum equal to the rate per centum per annum that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes from the date of the filing of the claim for refund to the date of entry of judgment, and such accrued interest shall be included in the judgment. This section shall not apply to taxes paid before the effective date of this act. (Added Stats 1941 ch 664 Section 10;

Amended Stats 1961 ch 2151 Section 1.)"

In commenting on this section in footnote 8 on page 11 of its decision, the Court of Appeal concluded that the section was inapplicable because it entitled the taxpayer to interest only on a refund obtained by a court order, and that no resort to court action was required so that the taxpayer might recover her refund. It is submitted this is erroneous for the reason that it is a narrow construction contrary to established principle that taxpayers should be compelled to resort to formal litigation in order to obtain interest when, in point of fact, they should always obtain interest on money erroneously collected. To encourage taxpayers to engage in litigation is clearly contrary to public policy.

Section 5105 is applicable for the reason that the instant case is an action for the recovery of "taxes" as defined in Section 5107.

Section 5105 deserves still closer consideration, having in mind that it comes under Chapter 5, Refunds, and Article

1, Refunds Generally, and was enacted in 1941. Clearly the legislature was attempting to fill the void which would occur if a taxpayer obtained a judgment for recovery and was left to

Page 8

receive interest only

from the date of judgment, as is the usual case. Here, the legislature seeking to redress that possible wrong, said the plaintiff would recover interest "... on the amount allowed and recovered as taxes from the date of filing of the claim for refund to the date of entry of judgment, . . ."

Revenue and Taxation Code Section 5108 was added in 1970 and is thus the most recent. It states:

"Interest at the rate of 6 per cent per annum shall be paid, when such interest is ten dollars (\$10) or more, on amounts refunded . . . as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes. . . . Interest allowed under this section shall be computed . . . from the date of the payment of the tax on property subject to an application for equalization of the assessed value thereof to the date of the determination of the equalized value of the property; provided, however, that no interest shall be paid under the provisions of this section if such period of time is 30 days or less." (Emphasis added)

Section 5108 is helpful in the case of Helen Ball because it points to a liberalization of statutory law in the area of interest on refunds which this court should follow.

II

CALIFORNIA REVENUE AND TAXATION  
CODE AUTHORITY IS NOT NECESSARY TO  
REQUIRE COUNTY TO PAY INTEREST

Assuming that the Court of Appeal has correctly interpreted Revenue and Taxation Code Sections 5107 and 5143, it is still the contention of Appellant that she is entitled to recover interest

Page 9

from County even absent such a provision by statute on the following grounds:

1. As a matter of constitutional right, the Appellant is entitled to the same protection and the same provisions as the taxing authority; and
2. As a matter of equity it is not fair for County to be able to demand interest on delinquent taxes and not pay interest on improperly collected taxes.

3. Under the theory of implied contract, Helen Ball is entitled to interest on her refund.

The Court of Appeal at page 5 recognized "In some jurisdictions it is held that there is an implied contract between the state and the taxpayer that the state will be liable for interest for the period of time it has the use of the taxpayer's money. Therefore these jurisdictions have adopted the rule that a state or municipal corporation which must refund all or part of a tax which has been paid is liable for interest on the refund even in the absence of a statute which specifically authorizes payment of interest. (Annot., Right to Interest on Tax Refund or Credit in Absence of Specific Controlling Statute (1963) 88 A.L.R. 2d 823, 825827, Section 2, and cases cited.)"

Appellant supports this rationale for recovery and believes that California should adopt this basis for refund without statutory authority.

Page 10

### III

#### TAXPAYERS ARE ENTITLED TO EQUAL PROTECTION UNDER THE LAW

---

This Appeal is advanced, in part, upon the premise that all parties before a court of law are entitled to equal treat-

ment under the law. The Fourteenth Amendment to the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A California County and an elderly widow must abide by the same rules and are entitled to the same rights and privileges. Upon issuance of a tax bill from the County, if a citizen fails to make payment, whether by mistake, inadvertence or neglect, the County has the authority to, and does, charge interest on the amount due. Under equal protection it is therefore only proper that if the County collects taxes by mistake, inadvertence or neglect, it must pay interest on the amount erroneously collected.

Helen Ball advances for herself, and for all other taxpayers similarly situated, the proposition that equal protection of the laws means that if a county charges and collects money (interest) for delinquent payment of property taxes, then, equally, County must refund money (interest) when it has use of taxpayers' money due

Page 11

to an overpayment of tax.

The Honorable Learned Hand declared in Proctor & Gamble Distributing Co. v. Sherman, 2 F. 2d 165, 166 (D.C.N.Y. 1924):

". . . it is not an adequate remedy, after taking away a man's money as a condition of allowing him to contest his tax, merely to hand it back, when, no matter how long after, he established that he ought never to have been required to pay at all. Whatever

may have been our archaic notions about interest, in modern financial communities a dollar today is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well-settled beliefs about value, and, if I get not compensation for its loss, my remedy does not altogether right my wrong."

The facts herein are not in dispute. Helen Ball does not claim for herself, or any other taxpayer, that a penalty should be assessed against County for any willful or improper conduct.

Instead, her claim is based upon the argument that Civil Code Section 1915 provides the underlying basis for interest. Revenue and Taxation Code Section 5107 and Section 5143<sup>1</sup> authorize the County to pay interest on taxes which were improperly assessed, and thereafter paid, with or without protest. Even assuming that statutory authority does not exist, Helen Ball's claim would rest upon the constitutional premise of equal treatment under the law as specified in the Fourteenth Amendment and under the theory of implied contract. This Court should order County to do that which it is unwilling to do — treat the taxpayer in the same way it demands to be treated.

Page 12

#### IV

#### UNITED STATES SUPREME COURT AND FEDERAL COURT CASE LAW SUPPORT APPELLANT'S POSITION

The United States Supreme Court has recognized for over 100 years that: "Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit

<sup>1</sup>In this petition all references to California Revenue and Taxation Code are to sections in effect at the time the application for, and receipt of, refund in 1974, although many Sections have been subsequently amended.

against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction." Erskine v. Van Arsdale, 15 Wall. (U.S.) 75, 77 (1862). See also: Redfield v. Bartels, 139 U.S. 694, 11 Sup. Ct. 683, 35 L.Ed. 310 (1891); National Home v. Parrish, 229 U.S. 494, 33 Sup. Ct. 944, 57 L.Ed. 1296 (1913); Billings v. United States, 232 U.S. 261, 286, 34 Sup. Ct. 421, 58 L.Ed. 596 (1914); State, etc., Co. v. Davis (D.C.), 228 Fed. 246, 250 (1915); Haiku Sugar Co. v. Johnstone, 249 Fed. 103, 109, 161 C.C.A. 155 (1918); International Paper Co. v. Burrill (D.C.), 260 Fed. 664, 667 (1919).

In International Paper Co. v. Burrill, *supra*, at page 669, the Court held: "As the money was wrongfully obtained by the defendant through implied duress, and as it is no defense that the defendant has paid the money into the treasury of the commonwealth, there must be judgment for the plaintiff for the amount of the tax, with interest thereon from the date of payment, May 22, 1916."

Modernly, the "adequacy of remedy at law" issue was raised in Mullaney v. Hess, 189 F. 2d 417 (9th Cir. 1951).

Page 13

Applying Alaska law, the court stated:

"We think that the weight of authority is that interest is recoverable on tax refunds in absence of express statutory authority therefor. The reasoning of these cases is in harmony with the modern view they express."

Id. at 420.

In 1957 in Ketchikan Spruce Mills v. Kewey, 17 Alaska 336 (1957), the United States District Court for Alaska also permitted recovery of interest under a territorial statute which provided for refund of taxes but made no mention of interest.

#### V

#### APPELLANT ACTED AS A LAW ABIDING CITIZEN AND NOT MISTAKENLY

Appellant, Helen Ball's payment of property taxes did not occur as a mutual mistake between her and County, as suggested in the Court of Appeal's decision.

Appellant, Helen Ball, acted as any law abiding citizen would ordinarily act upon receipt of a property tax bill from an authorized taxing authority. She paid the bill. If law abiding citizens do not promptly pay bills, the result would be confusion, late tax payments, and possible collapse of local governments.

Therefore, Helen Ball was not mistaken, but paid in good faith, a bill from County.

Page 14

## VI

### CALIFORNIA CASES DO NOT PROVIDE CURRENT LAW PERTAINING TO INTEREST ON TAX REFUNDS

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There is no current California case law that deals with the question of whether a taxpayer is entitled to interest on property tax refunds.

## VII

### OTHER STATES CASE LAW FURTHER SUPPORTS PETITIONER'S POSITION

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Of all the states, Pennsylvania has the most thoroughly developed case law on the question of interest on refunds of real property taxes. There has, moreover, been an evaluation of principles in that state which will be illuminating in the case of Helen Ball.

The underlying principles were enunciated in the leading and often cited case of Philadelphia and Reading Coal and Iron Co. v. School District of Borough of Tamaqua, 304 Pa. 489, 156 A. 75 (1931). Plaintiff won a judgment that real property taxes for the benefit of the school district had been improperly assessed. The court held:

"One further question raised in argument remains to be determined, whether or not plaintiff is entitled to interest on the amount paid in excess of the proper levy. The judgment as it now stands is for the total excess payment, \$8,547.75, with interest at 6 per cent, from September 21, 1923, the date of payment by plaintiff, the whole amounting to \$12,137.80. The precise point

Page 15

does not appear to have been raised before in this court, and we are thus free to deal with it unhampered by precedent. It is unnecessary to review the wealth of conflicting authorities in other jurisdictions. . . . The weight of authority appears to be that, where the taxpayer is entitled to a refund on an excess payment of taxes, whether such right accrues by virtue of statute or not, the taxpayer is entitled to interest on the refund if no statute or public policy militates against it. Such is the law in the United States courts . . . as well as several other states. . . . With this view we agree."

156 A. at 77 (citations omitted).

In Cities Service Oil Co. v. City of Pittsburgh, 449 Pa. 481, 297 A. 2d 466 (1972), the court discussed the various rules in a context of mercantile license taxes paid for the benefit of a school district. The court's decision appears to be equally applicable to real estate taxes, especially since the whole line of decisions originated with Tamaqua. It was held, in broad and useful language:

"If a taxpayer is entitled to a tax refund, he is also entitled to interest on the refund so long as no statute or public policy militates against it, . . . The commonwealth Court, in determining the date from which to compute the interest due Cities Service, stated, . . .

before interest will accrue there must be an improper detention by the taxing authority; and the taxpayer must make a demand for refund. . . . However, the taxing authority's detention of the taxpayer's money is not improper until there has been a decision to this effect.' . . .

"We agree that there must be an improper detention and that the taxpayer must make a demand for refund. We disagree that in all cases improper detention commences from the date of a decision to that effect. Rather, we believe that a court can decide that a taxing body has improperly detained the taxpayer's money from a point in time prior to the determination that the detention is improper. . . .

#### Page 16

"Here the taxpayer has asked that interest be computed from the date of payment and demand for refund. Courts in charging and allowing interest need not limit themselves by hard and fast rules but should charge and allow interest in accordance with principles of equity . . . That the taxpayer's money was improperly detained and demand for refund made should be sufficient to justify a court's exercise of its equity powers. Here, however, the taxpayer paid the taxes promptly once they were assessed; inflation had deteriorated the value of the dollar that was improperly detained by the City and School District; and the City and School District, never having any right to the money, were able to borrow less or invest the money. Since the City and School District benefited from the use of the taxpayer's money, it is only fair that the taxpayer

receive simple interest for the period the money was improperly detained.

"Moreover, if taxing authorities are authorized to collect combined interest and penalties on back taxes to their original due dates (at a rate greater than the simple interest sought here on a refund), we see no hardship in requiring them to pay simple interest on amounts improperly detained from the date of payment and demand."

297 A. 2d at 468-469 (citations omitted; emphasis added). The equitable principles enunciated in that case should be applied in the case of Helen Ball.

In Bryam v. Thurston County, 141 Wash. 28, 251 P. 103 (1926), upon reargument, 141 Wash. 28, 252 P. 943 (1927), interest was allowed on real property taxes illegally assessed and paid under protest. The court referred to an older case which awarded interest but gave no reason for the award:

"It is also contended that in any event the interest allowed from the date of the payment of the illegal tax under protest is improper, citing authority from other jurisdictions to the effect that interest is never allowed on illegal taxes sought to be recovered after payment. We seem to have settled this question in this state in the case of Great Northern Railway

#### Page 17

Co. v. Stevens County, 108 Wash. 238, 183 P. 65, where we gave directions to enter judgment in favor of the company against the County for the amount of the illegal tax, with legal interest from March 6, 1918, the date on which the railway company was compelled to, and did, pay an excessive and illegal tax.

"After having examined and considered all the questions raised in the case, we are convinced that the judgment was right."

251 P. at 110. See also Dorig Co. v. King County, 59 Wash. 2d 741, 370 P. 2d 254 (1962).

In Arizona, the principal decision is State Tax Commission v. United Verde Extension Mining Co., 39 Ariz. 136, 4 P. 2d 395 (1931), reh. denied, 39 Ariz. 331, 6 P. 889 (1931). The Court relied upon statutory authorization for the award of interest but gave as its reason an equitable argument:

(I)n reason and logic, when the state compels one of its citizens under the pain of forfeiting all rights of recovery, to pay in advance of suit a sum of money which it is afterwards adjudged was illegally demanded, the same principle of common justice would require that the state, to make the citizen whole, should repay not merely the sum illegally so obtained, but interest from the date the money was paid to it. Were this a case of a small taxpayer, who, in order to maintain his suit, was compelled to borrow money to pay the illegal tax, it would be recognized at a glance that full justice could only be done by repaying to him, not only the sum so paid, but interest thereon, and in principle no difference exists because the taxpayer in this case happens to be a large corporation which presumably had in its treasury the funds to pay the tax."

4 P. 2d at 399. The reasoning of the United Verde case was relied upon in Williams v. Harvey, 91 Mont. 168, 6 P. 2d 418 (1931), which was, however, also a case based primarily on statute. See also Ford Motor Co. v. City of Detroit, 43 Mich. App. 248,

Page 18

204 N.W. 2d 348 (1973).

In South Dakota, the leading case is Zimmerman v. Corson County, 39 S.D. 167, 163 N.W. 711 (1917). The Court spoke of interest in the context of whether an injunction

should be issued, a disallowance of interest resulting in "no adequate remedy at law." It was held:

"Respondent's suggestion that the remedy is not adequate for the reason that the statute does not in terms authorize a recovery of interest is without merit. It cannot be doubted that plaintiff would be entitled to interest upon any sum wrongfully collected by the County; nor can we agree with respondent's suggestion that the enforced collection of a tax, unlawful in whole or in part, may result in irreparable injury such as to entitle the plaintiff to a remedy by injunction."

163 N.W. at 713. Likewise in Chicago St. P. M. & O. Ry. v. Mundt, 56 S.D. 530, 229 N.W. 394 (1930), it was held:

"It seems to us the fair, just and reasonable rule that, when the sovereign submits itself to suit, unless the statute expressly provides to the contrary, it should come into court on the same basis as to liability for interest and costs, in the event of adverse decision, as any other suitor. . . .

". . . .

". . . Conceding that sovereignty is not subject to suit without its consent, and that a suit to recover taxes paid may be deemed a suit against the sovereign, nevertheless when the sovereign consents to suit it ought not to be given an unfair and arbitrary advantage therein, beyond what is accorded to other suitors similarly circumstanced, unless necessity or the language of a statute so requires. We think Zimmerman v. Corson County announces a rule consonant with justice and supported by many decisions, and we are not now disposed to depart from it merely because it was not treated at more length when announced, or because there is

and has been some conflict in the decisions relating to the point."

Page 19

229 N.W. at 395. See also Chicago and Northwestern Ry. v. Schmidt, 85 S.D. 223, 180 N.W. 233 (1970) (plaintiff entitled to interest but employed erroneous procedure).

In Indiana, the court rejected contractual arguments in a case involving taxes on the receipts of an insurance company and relied on cases of the United States Supreme Court:

(I)n actions to recover back money unlawfully enacted in the name of the state by a public officer, of which the state has had the possession and use, and of the use of which the owner has been deprived since it was so paid under compulsion, a different rule has been applied. For many years the Supreme Court of the United States has uniformly held that 'in suits against collectors to recover moneys illegally exacted as taxes and paid under protest \*\*\* interest is recoverable without any statute to that effect, and this, although the judgment is not to be paid by the collector but directly from the treasury.' Erskine v. Van Arsdale, 15 Wall. (U.S.) 75, 77, 21 L.Ed. 63 (1872). . . .

"The rule thus adopted is just and equitable and should be followed in the absence of any positive law to the contrary."

Metropolitan Life Insurance Co. v. State, 194 Ind. 657, 144 N.E. 420, 422 (1924) (citations omitted).

An older case, much cited, held under statutory authority that interest should be paid from the date of demand. Boott Cotton Mills v. City of Lowell, 159 Mass. 383, N.E. 367 (1893)

Page 20

VIII  
CALIFORNIA POLICY WITH RESPECT TO

INTEREST ON OVERPAYMENT OF OTHER TAXES

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This petition would not be complete if California policy with respect to interest on overpayment of other taxes were not noted.

California pays interest on overpayment of personal<sup>2</sup> and corporate,<sup>3</sup> income, gift,<sup>4</sup> sales<sup>5</sup> and unemployment<sup>6</sup> taxes.

The interest rate is 6 per cent per year for the first year and 12 per cent thereafter on repayment of personal<sup>2</sup> and corporate<sup>3</sup> income, gift and unemployment taxes. The 12 per cent rate applies after January 1, 1976. Prior to 1976 the rate was 6 percent in all cases.

Clearly California policy is stated and restated in its code sections to award interest on refunds of overpayment of taxes. Its counties should do no less.

Page 21

CONCLUSION

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1. County has authority to pay interest on refunds because Section 5107 and Section 5143 of the Revenue and Taxation Code so authorize.

2. Even if this Court finds that statutory authority does not exist for the payment of interest on property tax refunds, said payment of interest on refunds should still be paid on the basis of implied contract, equity and as a matter of the United States Constitutional right guaranteed by the Fourteenth Amendment.

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<sup>2</sup>Rev. & Tax. Code Sections 19062-62.11

<sup>3</sup>Rev. & Tax. Code Sections 26080-81

<sup>4</sup>Rev. & Tax. Code Sections 15681-85, 15961-65, 16271-72, 16562

<sup>5</sup>CCH California Tax Reports Sections 60-004, 62-101, 63-200, 63-219

<sup>6</sup>CCH Unemployment Insurance Reports, California Sections 40351-4071, 4221, 4224-4232, 4243, 4245-4246

3. There is inadequate and outdated California case law regarding interest on refunds of property taxes to taxpayers. This Court should take this opportunity to state the correct rule of law with respect to interest on refunds of property taxes, and thus bring California within the well-reasoned weight of authority.

4. County collects interest for delinquent property taxes; it should pay for use of improperly collected property taxes.

5. The majority of State Courts and the Federal Courts, order reimbursement from date of payment, for use of tax money paid in response to an improper assessment, and thereafter subsequently refunded.

6. Helen Ball, and all other taxpayers similarly situated, are entitled to reimbursement for use of their money paid and subsequently refunded.

**Page 22**

WHEREFORE, Appellant, for herself and all others similarly situated, prays that:

1. The Superior Court of Los Angeles County ORDER DISMISSING COMPLAINT AND FOR ENTRY OF SUMMARY JUDGMENT dated February 3, 1977 be vacated;

2. The judgment of the Court of Appeal of the State of California, Second Appellate District, dated June 29, 1978 be vacated;

3. This Court determine that Los Angeles County has authority to reimburse taxpayers for the use of their money;

4. This Court determine that Los Angeles County and its taxpayers must abide by the same rules and are entitled to the same rights and privileges; if County charges and collects interest for delinquent payment of property taxes, then County must be called upon to refund interest when it has the use of taxpayers' money due to an overpayment of tax, improper assessment, or any other reason taxpayer has paid too much to Los Angeles County;

5. This Court ORDER Los Angeles County to reimburse taxpayer for use of her money, said reimbursement to be compounded annually from the date claims for refunds

accrued to date of payment, and thereafter interest on the interest;

6. This class action be returned to the Los Angeles Superior Court for completion of trial;

7. Such other relief and further order as this Court deems appropriate be ordered.

**Page 23**

Dated: August 8, 1978

Respectfully submitted,  
VOLNEY F. MORIN &  
VOLNEY F. MORIN, JR.  
By Volney F. Morin  
Attorneys for Appellant

## APPENDIX G

### TEXT OF PERTINENT SECTIONS OF CALIFORNIA REVENUE AND TAXATION CODE

#### Section 202. Crops, library, museum, school and sovereign exemptions

The exemption of the following property is as specified in subdivisions (a), (b), (d) and (h) of Section 3 of Article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof:

- (a) Growing crops.
- (b) Property used for free public libraries and free museums.
- (c) Property used exclusively for public schools.
- (d) Property belonging to this state, a county, or a city. Property belonging to the State Compensation Insurance Fund is not property belonging to this state.

Enacted 1939; Amended Stats 3d Ex Sess 1944 ch 5 Section 1, effective May 16, 1944; Stats 1951 ch 917 Section 1; Stats 1974 ch 311 Section 5.

#### Section 2617. Accrual of delinquency: Penalty rate

All taxes due November 1st, if unpaid, are delinquent December 10th at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to them.

Enacted 1939; Amended Stats 1943 ch 366 Section 1; Stats 1947 ch 1086 Section 1, operative July 1, 1948; Stats 1951 ch 441 Section 1.

#### Section 2618. When second half of realty taxes deemed delinquent

The second half of taxes on real property, if unpaid, is delinquent April 10th at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Enacted 1939; Amended Stats 1947 ch 1086 Section 2, operative July 1, 1948; Stats 1953 ch 912 Section 1.

#### Section 2704. When first installment delinquent: Penalty

All taxes due November 1st, if unpaid, are delinquent December 10th at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to them.

Added Stats 1945 ch 976 Section 1, effective June 23, 1945; Amended Stats 1947 ch 1086 Section 4, operative July 1, 1948; Stats 1951 ch 441 Section 3.

#### Section 2705. When second installment delinquent: Penalty

The second half of taxes on the secured roll, if unpaid, is delinquent April 10th at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Added Stats 1945 ch 976 Section 1, effective June 23, 1945; Amended Stats 1947 ch 1086 Section 5, operative July 1, 1948; Stats 1953 ch 912 Section 3.

#### Section 2759. When first installment delinquent: Penalty

The first installment of one-fourth of the taxes on real and personal property on the secured roll, if not paid, is delinquent October 10 at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Added Stats 1967 ch 510 Section 1.

#### Section 2760. When second installment delinquent: Penalty

The second installment of one-fourth of the taxes on real and personal property on the secured roll, if not paid, is delinquent January 10 at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Added Stats 1967 ch 510 Section 1.

#### Section 2761. When third installment delinquent: Penalty

The third installment of one-fourth of the taxes on real and personal property on the secured roll, if not paid, is delinquent March 10 at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Added Stats 1967 ch 510 Section 1.

**Section 2762. When fourth installment delinquent:  
Penalty**

The fourth installment of one-fourth of the taxes on real and personal property on the secured roll, if not paid, is delinquent May 10 at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to it.

Added Stats 1967 ch 510 Section 1.

**Section 2922. Time of delinquency: Penalties**

(a) Taxes on the unsecured roll as of July 31st if unpaid are delinquent August 31st at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to them. Taxes added to the unsecured roll after July 31st, if unpaid are delinquent at 5 p.m. on the last day of the month succeeding the month in which the assessment was added to the unsecured roll and thereafter a delinquent penalty of 6 percent attaches to them, except that taxes transferred to the unsecured roll pursuant to Section 4986 of this code to which penalties had attached while on the secured roll and also were transferred shall be subject only to the additional penalties prescribed by subdivision (b). If August 31st or the last day of any month falls on Saturday, Sunday or a legal holiday, and if payment is received by 5 p.m. of the next business day, the 6 percent penalty shall not attach.

(b) If taxes on the unsecured roll are unpaid by 5 p.m. of the last day of the second succeeding month after the 6 percent penalty attaches pursuant to subdivision (a), an additional penalty of 1 per cent attaches to them on the first day of each month thereafter to the time of payment or to the time a court judgment is entered for the amount of the unpaid taxes and penalties, whichever occurs first. If the last day of any month falls on Saturday, Sunday or a legal holiday, the additional penalty of 1 percent shall attach after 5 p.m. on the next business day.

Enacted 1939; Amended Stats 1947 ch 851 Section 5; Stats 1951 ch 485 Section 2; Stats 1953 ch 800 Section 5; Stats 1974 ch 1101 Section 12.

**Section 2922.5. Cancellation of penalty; Interest charges;  
Additional penalties**

Notwithstanding Section 2922, with respect to taxes on the unsecured roll to which an application for reduction in assessment has been filed pursuant to Section 1607 and the board reduces the assessment in dispute, Section 4985 of this code shall apply.

If a taxpayer does not pay by the delinquent date established by Section 2922 and indicated on the unsecured assessment roll, interest at the rate of 1/2 percent per month on the unpaid tax shall be charged from such date to the date of payment. Taxes unpaid by 5 p.m. on the date established by Section 4985 are delinquent and thereafter a delinquent penalty of 6 percent attaches to them.

If taxes are unpaid by 5 p.m. of the last day of the second succeeding month after the 6 percent penalty attaches, an additional penalty of 1 percent attaches to them on the first day of each month thereafter to the time of payment or to the time a court judgment is entered for the amount of the unpaid taxes and penalties, whichever occurs first. This section is not applicable to assessments made pursuant to Section 501, or to assessments made pursuant to Section 531.2 where the escape is the result of an act or omission of the assessee and to assessments made pursuant to Sections 531.3, 531.4, and 531.5.

Added Stats 1973 ch 1003 Section 1.

**Section 5096. Refund on order or board of supervisors**

On order of the board of supervisors, any taxes paid before or after delinquency shall be refunded if they were:

- (a) Paid more than once.
- (b) Erroneously or illegally collected.
- (c) Illegally assessed or levied.
- (d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by assessee.

- (e) Paid on an assessment of improvements when the improvements did not exist on the lien date.
- (f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section 1613 by the county board of equalization.

Enacted 1939; Amended Stats 1941 ch 664 Section 1; Stats 1963 ch 2077 Section 3; Stats 1st Ex Sess 1966 ch 147 Section 97; Stats 1974 ch 311 Section 63; Amended Stats 1976 ch 499 Section 1; Stats 1977 ch 921 Section 1.2.

#### **Section 5097. Refund claims; Verification and filing**

No order for a refund under this article shall be made except on a claim:

- (a) Verified by the person who paid the tax, his guardian, executor, or administrator.
- (b) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, whichever is later.

An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he may thereafter and within the period provided in subdivision (b) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1603 or Section 1604.

Enacted 1939; Amended Stats 1963 ch 2077 Section 4; Stats 1st Ex Sess 1966 ch 147 Section 98; Stats 1967 ch 746 Section 2; Stats 1970 ch 540 Section 2; Amended Stats 1975 ch 224 Section 13.5; Stats 1976 ch 499 Section 2.

#### **Section 5099. Scope of supervisors' refund order**

The refund ordered by the board of supervisors may include county taxes and taxes collected by county officers for a city or revenue district.

Enacted 1939; Amended Stats 1941 ch 664 Section 3; Stats 1957 ch 155 Section 13.

#### **Section 5101. Manner of payment**

Refunds ordered by the board of supervisors under this article in respect of county taxes shall be paid by warrant drawn upon the appropriate fund by the county auditor. Refunds ordered in respect of revenue districts, except chartered cities, may be paid by a warrant drawn by the county auditor, upon such available funds, if any, as the revenue district may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such revenue district and on deposit in the county treasury. Refunds ordered in respect of chartered cities shall be paid in the manner provided for their payment in the charter or ordinances of the city. Neither any county nor its officers shall refund amounts on behalf of a revenue district from county funds.

Added Stats 1941 ch 664 Section 7.

#### **Section 5103. Time for commencing refund action: Dismissal in event of untimely service of summons: parties defendant**

If the board of supervisors or city council rejects a claim for refund in whole or in part, the person who paid the taxes, his guardian, executor, or administrator may within six months after such rejection commence an action in the superior court against the county or a city to recover the taxes which the board of supervisors or the city council have refused to refund.

If an applicant for reduction of an assessment states in the application that the application is intended to constitute a claim for refund pursuant to Section 5097, said claim for refund shall be deemed denied on the date of the final installment of the taxes extended on such assessment become delinquent.

No such action hereafter commenced shall be further prosecuted, and no further proceeding shall be had therein, and all such actions hereafter commenced must be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any

defendant therein unless the summons shall have been issued and served and the return thereon made within one year after the commencement of said action, except where the parties have filed a stipulation in writing that the time may be extended.

If all or any portion of the taxes sought to be recovered were collected by officers of the county for a city, an action must be brought against the city for the recovery of such taxes and judgment must be sought against the city. Where actions are brought against the city under this article, in which event it shall be the duty of such counsel to defend such actions, or the city may provide that such actions shall be defended by its own counsel.

Added Stats 1941 ch 664 Section 8; Amended Stats 1967 ch 1236 Section 1; (Repealed by Stats 1976 ch 499 Section 6.)

#### **Section 5104. Prerequisites to refund action**

No action shall be commenced or maintained under this article unless a claim for refund shall have been filed in compliance with the provisions of this article, and no recovery of taxes shall be allowed in any such action upon a ground not asserted in the claim for refund.

Added Stats 1941 ch 664 Section 9; (Repealed by Stats 1976 ch 499 Section 7.)

#### **Section 5105. Recovery of interest**

In any action in which the recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate per centum per annum equal to the rate per centum per annum that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes from the date of the filing of the claim for refund to the date of entry of judgment, and such accrued interest shall be included in the judgment. This section shall not apply to taxes paid before the effective date of this act.

Added Stats 1941 ch 664 Section 10; Amended Stats 1961 ch 2151 Section 1; (Repealed by Stats 1976 ch 499 Section 8.)

#### **Section 5105.5. Determination of interest allowed**

The court shall fix the amount of interest, if any, not to exceed a rate of percent equal to the rate of percent that the defendant has received, through investment or by bank deposit, on the amount allowed and recovered as taxes which shall be allowed under Section 5105 in any action for the recovery of taxes in which the plaintiff is a city.

Added Stats 1955 ch 1867 Section 1; Amended Stats 1961 ch 2151 Section 2; (Repealed by Stats 1976 ch 499 Section 9.)

#### **Section 5106. Amount refundable where taxes paid after delinquency**

Where the taxes sought to be refunded or recovered have been paid after delinquency, the amount of penalties, interests or costs refundable or recoverable under this article shall be computed only on the taxes refunded or recovered.

Added Stats 1941 ch 664 Section 11.

#### **Section 5107. "Taxes"**

As used in this article, "tax" or "taxes" includes penalties, interest, and costs.

Added Stats 1941 ch 664 Section 12.

#### **Section 5108. When 6% interest payable**

Interest at the rate of 6 percent per annum shall be paid, when such interest is ten dollars (\$10) or more, on amounts refunded under Section 5096.3 or 5096.7, or refunded as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes. However, no interest shall be paid under the provisions of this section if the taxpayer has been given the notice required by Section 2835 and has failed to apply for the refund within 30 days after the mailing of such notice.

Interest allowed under this section shall be computed from the date of the recording of the deed to the public agency acquiring the property in eminent domain to the

date of the filing of the claim for refund, or from the date of the payment of the tax on property subject to an application for equalization of the assessed value thereof to the date of the determination of the equalized value of the property; provided, however, that no interest shall be paid that no interest shall be paid under the provisions of this section if such period of time is 30 days or less.

The interest charged shall be apportioned to the appropriate funds, as determined by the county auditor.

Added Stats 1970 ch 638 Section 1; (Amended and renumbered Section 5151 by Stats 1976 ch 499 Section 10.)

#### **Section 5141. Limitation of actions**

An action brought under this article shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

If an applicant for the reduction of an assessment states in the application that the application is intended to constitute a claim for refund pursuant to Section 5097, the claim for refund shall be deemed denied on the date the final installment of the taxes extended on such assessment becomes delinquent or on the date the equalization board makes its final determination on the application, whichever is later.

Added Stats 1941 ch 663 Section 2; Amended Stats 1961 ch 2151 Section 3; Added Stats 1976 ch 499 Section 12.

#### **Section 5141.5 Determination of interest allowed under Section 5141**

The court shall fix the amount of interest, if any, not to exceed a rate of percent which is equal to the rate of percent that the defendant has received, through investment or by bank deposit, on the amount of money allowed and recovered as taxes which shall be allowed under Section 5141 in any action for the recovery of taxes in which the plaintiff is a city.

Added Stats 1955 ch 1867 Section 2; Amended Stats 1961 ch 2151 Section 4; (Repealed by Stats 1976 ch 499 Section 11, operative with respect to taxes due and payable on or after lien date in 1977.)

#### **Section 5142. Filing of claim as prerequisite**

No action shall be commenced or maintained under this article unless a claim for refund has first been filed pursuant to Article 1 (commencing with Section 5096) of this chapter.

No recovery shall be allowed in any such action upon any ground not specified in the claim.

Added Stats 1941 ch 66 Section 3; Added Stats 1976 ch 499 Section 12.

#### **Section 5143. "Taxes"**

As used in this article, "tax" or "taxes" includes penalties, interests and costs.

Added Stats 1941 ch 663 Section 4; (Repealed by Stats 1976 ch 499 Section 11.)

#### **Section 5143. Claims relating to validity of portion of assessment**

If a claim for refund relates only to the validity of a portion of an assessment, an action may be brought under this article only as to that portion.

Added Stats 1976 ch 499 Section 12.

Former Section 5143 was repealed by Stats 1976 ch 499 Section 11, operative with respect to taxes due and payable on or after lien date in 1977.

#### **Section 5150. Inclusion in judgment**

In an action in which the recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate of 6 percent per annum from the date of filing of the claim for refund, but in no event earlier than the date of payment of the tax or installments thereof sought to be refunded, to the date of entry of judgment, and such accrued interest shall be included in the judgment. This section shall also apply to any action for the recovery of taxes in which the plaintiff is a city.

This section shall not apply to taxes which became due and payable before March 1, 1977. Interest on taxes which became due and payable before March 1, 1977,

shall be subject to the provisions on payment of interest in effect prior to January 1, 1977.

Added Stats 1976 ch 499 Section 13.

Prior Law: Former Sections 5105, 5105.5, 5141.5.

**Section 5151. Property acquired by eminent domain or by public agency be negotiated purchase**

Interest at the rate of 6 percent per annum shall be paid, when such interest is ten dollars (\$10) or more, on amounts refunded under Section 5096.3 or 5096.7, or refunded as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes. However, no interest shall be paid under the provisions of this section if the taxpayer has been given the notice required by Section 2635 and has failed to apply for the refund within 30 days after the mailing of such notice.

Interest allowed under this section shall be computed from the date of the recording of the deed to the public agency acquiring the property in eminent domain to the date of the filing of the claim for refund, or from the date of the payment of the tax on property subject to an application for equalization of the assessed value thereof to the date of the determination of the equalized value of the property; provided, however, that no interest shall be paid under the provisions of this section if such period of time is 30 days or less.

The interest charged shall be apportioned to the appropriate funds, as determined by the county auditor.

**Amendments:**

Section 5108 amended and renumbered Stats 1976 ch 499 Section 10.

**Section 6907. Interest on overpayments**

Interest shall be paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

**The interest shall be paid:**

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1941 ch 36 Section 1, effective June 1, 1943; Amended Stats 1945 ch 926 Section 6, effective June 15, 1945, operative July 1, 1945; Stats 1947 ch 567 Section 8, effective June 5, 1947, operative July 1, 1947; Stats 1949 ch 669 Section 3, effective June 16, 1949, operative July 1, 1949, ch 727 Section 3, effective June 18, 1949, operative July 1, 1949; Amended Stats 1975 ch 661 Section 5.

**Section 6936. Allowance of interest**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1941 ch 36 Section 1, effective July 1, 1943; Amended Stats 1975 ch 661 Section 6.

**Section 8130. Interest on overpayments: Rate: Interest imposed on claimant: Period**

Interest shall be paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the first day of the second calendar month following the monthly period for which the overpayment is made; but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

**The interest shall be paid:**

(a) In the case of a refund, if the claimant files a claim

on his own initiative or within 30 days after he is notified by the board that a claim may be filed, to the 10th day after the date upon which the claim is certified to the State Board of Control; otherwise to the 30th day after the date upon which claimant is notified by the board that the claim may be filed.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1943 ch 874 Section 49, effective May 29, 1943, operative July 1, 1943, as Section 8193; Renumbered Stats 1945 ch 531 Section 12, effective May 29, 1945, operative July 1, 1945; Amended Stats 1963 ch 1527 Section 4; Amended Stats 1975 ch 661 Section 12.

#### **Section 8151. Allowance of interest**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount of the license tax found to have been illegally collected from the date of payment thereof to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1934 ch 37 Section 1, effective July 1, 1943; Amended Stats 1941 ch 981 Section 2, effective July 1, 1943; Amended Stats 1975 ch 661 Section 13.

#### **Section 9155. Interest on overpayment**

Interest shall be paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the last day of the calendar month following the period for which the overpayment was made; but no refund or credit shall be made on any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed

or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1963 ch 2106 Section 3; Amended Stats 1975 ch 661 Section 18.

#### **Section 9174. Judgment for plaintiff: Disposition of amount of: Allowance of interest**

If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part and Part 2 (commencing with Section 7301) of this division, and the balance of the judgment shall be refunded to the plaintiff. In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1941 ch 38 Section 1, effective July 1, 1943; Amended Stats 1943 ch 470 Section 4; Amended Stats 1975 ch 661 Section 19.

#### **Section 10901. Refund of fees erroneously collected: Application: Time for**

Whenever the department erroneously collects any license fee not required to be paid under this part, the amount shall be refunded to the person paying it upon application therefor made within three years after the date of the payment.

Added Stats 1941 ch 40 Section 1, effective July 1, 1943; Amended Stats 1949 ch 149 Section 2; Stats 1959 ch 1626 Section 1; Stats 1961 ch 20 Section 1.

#### **Section 11555. Interest on amount illegally collected**

Interest shall be paid upon the amount of any overpayment of tax at the rate of 1 percent per month upon the amount found to have been illegally collected from

the date of payment of the amount to the date of allowance of credit on account of the overpayment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board from the first of the month following the month the tax becomes due. The interest shall be paid:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1972 ch 1273 Section 4; Amended Stats 1974 ch 54 Section 28; Amended Stats 1975 ch 661 Section 22.

#### **Section 11576. Allowance of interest**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1941 ch 41 Section 1, effective July 1, 1943; Amended Stats 1945 ch 501 Section 5; Amended Stats 1975 ch 661 Section 23.

#### **Section 11934. Refunds**

Claims for refunds of taxes imposed pursuant to this part shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of this code.

Added Stats 1967 ch 1332 Section 1 as Section 11935, operative January 1, 1968; Renumbered Stats 1968 ch 17 Section 13, effective April 9, 1968, operative July 1, 1968.

#### **Section 12983. Interest on overpayment: Rate: Duration of period of interest**

Interest shall be allowed upon the amount of any overpayment of tax pursuant to this part at the rate of 12 percent per annum from the due date of the tax for the year for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited. The interest shall be paid:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified in writing that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1959 ch 39 Section 26.5, effective April 1, 1959; Amended Stats 1961 ch 740 Section 64, operative January 1, 1962; Amended Stats 1975 ch 661 Section 29.

#### **Section 13107. Interest**

In any judgment, interest shall be allowed, subject to the same limitations as are prescribed by Section 12984, at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Controller.

Added Stats 1961 ch 740 Section 80, operative January 1, 1962; Amended Stats 1975 ch 661 Section 30.

#### **Section 14374. Interest on refunds**

No person is entitled to interest upon any refund allowed by this chapter.

Added Stats 1963 ch 1749 Section 6.

#### **Section 14375. Interest on judgment for refund**

A judgment for a refund allowed by this chapter bears in-

terest after the judgment becomes final and the refund is refused upon demand after such final judgment, but then only from the date of refusal.

Added Stats 1963 ch 1749 Section 6.

**Section 16271. Interest on overpayments: Rate: When allowable**

Interest shall be allowed and paid upon any overpayment of any tax, if the overpayment was not made because of an error or mistake on the part of the taxpayer, at the rate of 12 percent per annum as follows:

- (a) In the case of a credit, from the date of the overpayment to the date of the allowance of the credit. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this part.
- (b) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Controller.

Added Stats 1943 ch 658 Section 1, effective July 1, 1945; Amended Stats 1945 ch 380 Section 2, effective May 18, 1945; Amended Stats 1975 ch 661 Section 36.

**Section 16272. Interest on judgment for overpayment**

In the event an overpayment results from the judgment of any court modifying the amount of tax previously determined to be due, interest shall be allowed at the rate of 12 percent per annum upon the amount of the overpayment, from the date of the payment or collection thereof to the date of allowance of credit on account of such judgment or to a date preceding the date of the warrant by not more than 30 days, the date to be determined by the Controller.

Added Stats 1943 ch 658 Section 1, effective July 1, 1945; Amended Stats 1945 ch 380 Section 3, effective May 18, 1945; Stats 1968 ch 709 Section 13; Amended Stats 1975 ch 661 Section 37.

**Section 19062. Allowance and payment of interest upon overpayment of taxes**

- (a) Interest shall be allowed and paid on any over-

payment in respect of any tax, at the rate of 6 percent per annum as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount for which the credit is allowed. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this part.

(2) In the case of a refund, including a refund in excess of tax liability as prescribed in subdivision (h) of Section 17053.5, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Franchise Tax Board.

(b) With respect to credits or refunds which are payable more than one year, the interest rate in subdivision (a) shall be 12 percent instead of 6 percent.

Added Stats 1943 ch 659 Section 1, effective June 5, 1945; Amended Stats 1947 ch 1317 Section 7.5, effective July 10, 1947; Stats 1949 ch 831 Section 1; Stats 1951 ch 70 Section 1; Stats 1959 ch 414 Section 12, effective May 15, 1959; Stats 1973 ch 208 Section 56, effective July 11, 1973; Amended Stats 1975 ch 661 Section 43.

**Section 19061.11 Interest not allowed where refund within 90 days**

If any overpayment of tax imposed by this part is refunded or credited within 90 days after the return is filed, or within 90 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), whichever is later, no interest shall be allowed under Section 19062 on such overpayment.

For the purposes of this section, the term "overpayment of tax" shall be defined to include a refund in excess of tax liability as prescribed in subdivision (h) of Section 17053.5.

Added Stats 1967 ch 963 Section 101, effective July 29, 1967; Amended by Stats 1969 ch 980 Section 18; Stats 1973 ch 208 Section 57, effective July 11, 1973.

**Section 19091. Allowance of interest**

In any judgment of any court rendered for any overpay-

ment, interest shall be allowed at the rate of 6 percent per annum upon the amount of the overpayment, from the date of the payment or collection thereof to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Franchise Tax Board.

However, the interest rate specified in the preceding sentence shall be 12 percent instead of 6 percent per year with respect to credits or refunds which are payable more than one year.

Added Stats 1943 ch 659 Section 1, effective June 5, 1945; Amended Stats 1951 ch 70 Section 1; Amended Stats 1975 ch 661 Section 44.

#### **Section 26080. Interest on overpayments**

Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this part, at the rate of 12 percent per annum as follows:

(a) In the case of a credit, from the date of the overpayment to the date of the allowance of the credit. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this part.

(b) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, such date to be determined by the Franchise Tax Board.

Added Stats 1949 ch 557 Section 1, effective July 1, 1951; Amended Stats 1951 ch 71 Section 1, ch 72 Section 28, effective April 10, 1951, operative July 1, 1951; Stats 1961 ch 485 Section 7; Amended Stats 1975 ch 771 Section 51; Stats 1976 ch 146 Section 1.

#### **Section 26081. Manner of making credits or refunds of overpayments of estimated tax: Interest allowable**

Credits or refunds of overpayments of estimated tax shall be made by the Franchise Tax Board as provided in this article as respects overpayments of tax. Any amount paid as estimated tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Section 25401 for such taxable year (deter-

mined without regard to any extension of time for filing such return).

Added Stats 1st Ex Sess 1963 ch 2 Section 26; Amended Stats 1968 ch 237 Section 1; Amended Stats 1975 ch 661 Section 52; Stats 1976 ch 146 Section 4.

#### **Section 26107. Interest upon overpayment**

In any judgment of any court rendered for any overpayment of tax imposed by this part, interest shall be allowed at the rate of 12 percent per annum upon the amount of the overpayment, from the date of the payment or collection thereof to the date of allowance of credit on account of the judgment or to a date determined by the Franchise Tax Board preceding the date of the refund warrant by not more than 30 days.

Added Stats 1949 ch 557 Section 1, effective July 1, 1951; Amended Stats 1951 ch 71 Section 1; Amended Stats 1975 ch 661 Section 53.

#### **Section 30366. Computation, allowance, and payment of interest**

Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the 25th day of the calendar month following the monthly period for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1959 ch 1040 Section 1, effective June 17, 1959; Amended Stats 1963 ch 1527 Section 27; Stats 1967 ch 963 Section 137, effective July 29, 1967, operative August 1, 1967; Stats 1968 ch 469 Section 9; Amended Stats 1975 ch 661 Section 61.

#### **Section 30406. Judgment for plaintiff**

If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part, and the balance of the judgment shall be refunded to the plaintiff. In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1959 ch 1040 Section 1, effective June 17, 1959; Amended Stats 1975 ch 661 Section 62.

#### **Section 32405. Interest on overpayment**

Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the 15th day of the calendar month following the period for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited. The interest shall be paid:

- (a) In the case of a refund, to the 15th day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1955 ch 1842 Section 1; Amended Stats 1963 ch 1527 Section 29; Amended Stats 1975 ch 661 Section 67, ch 1186 Section 10.5.

#### **Section 32417. Interest on judgment for plaintiff**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the

amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1955 ch 1842 Section 1; Amended Stats 1975 ch 661 Section 68.

#### **Section 38606. Payment of interest**

Interest shall be paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

Added Stats 1976 ch 176 Section 13, effective May 24, 1976.

#### **Section 38616. Interest on judgment**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1976 ch 176 Section 13, effective May 24, 1976.

#### **Section 39202. Returns and payments: Security for tax: Claim for refund: Violations: "Retailer"**

The provisions of Chapter 5 (commencing with Section

6451), excepting Article 1.1 thereof, Chapter 6 (commencing with Section 6701), Chapter 7 (commencing with Section 6901), Chapter 8 (commencing with Section 7051) and Chapter 10 (commencing with Section 7151) of Part I of Division 22 shall apply to the assessments imposed under, and to the administration of this part. When the term "retailer" is used therein it shall be construed to include seller, permitholder, manufacturer and wholesaler for the purpose of this part.

Added Stats 1977 ch 1161 Section 7, effective September 30, 1977, operative January 1, 1978; (Repealed Stats 1978 ch 87 Section 16.)

#### **Section 40116. Interest**

Interest shall be paid upon any overpayment of any amount of surcharge from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.
- (c) Interest shall be computed at the rate of one-half of 1 percent per month, or fraction thereof, to and including December 31, 1977, and at the rate of 1 percent per month, or fraction thereof, thereafter.

Added Stats 1974 ch 991 Section 4, effective September 23, 1974; Amended Stats 1977 ch 624 Section 9; (Repealed Stats 1978 ch 87 Section 16.)

#### **Section 40130. Interest**

In any judgment, interest shall be allowed at the rate of 6

percent per annum to and including December 31, 1977, and at the rate of 12 percent per annum thereafter upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1974 ch 991 Section 4, effective September 23, 1974; Amended Stats 1977 ch 624 Section 10; (Repealed Stats 1978 ch 87 Section 16.)

#### **Section 41105. Interest on overpayment**

Interest shall be paid upon any overpayment of any amount of tax at the rate of three-fourths of 1 percent per month from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited. The interest shall be paid:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.

Added Stats 1976 ch 443 Section 7, effective July 10, 1976.

#### **Section 41113. Interest allowable**

In any judgment, interest shall be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1976 ch 443 Section 7, effective July 10, 1976.

#### **Section 42505. Interest on overpayment**

Interest shall be paid upon any overpayment of any amount of assessment at the rate of 1 percent per month from the last day of the second calendar month following the close of the calendar year or other period for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

- (a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the board that a claim to be filed or the date upon which the claim is approved by the board, whichever date is the earlier.
- (b) In the case of a credit, to the same date as that to which interest is computed on the assessment or amount against which the credit is applied.

Added Stats 1978 ch 87 Section 17, effective April 11, 1978.

#### **Section 42515. Interest allowable**

In any judgment, interest shall be allowed at the rate of 12 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

Added Stats 1978 ch 87 Section 17, effective April 11, 1978.

#### **APPENDIX H**

R/W 999-343

Library Contract No. 434

#### **L E A S E     A G R E E M E N T**

THIS INDENTURE made as of the 15th day of March, 1971, by and between HELEN BALL, a widow, herein-after referred to as "Lessor", and the CITY OF LOS ANGELES, hereinafter referred to as "Lessee".

#### **W I T N E S S E T H**

That Lessor, for and in consideration of the rent hereinafter specified to be paid by lessee, and the covenants and agreements hereinafter contained by the Lessee to be kept and performed, does hereby lease and demise unto Lessee those certain premises in the City of Los Angeles, County of Los Angeles, State of California, described as that certain commercial structure located at 134 Glendale Boulevard, Los Angeles, California.

TO HAVE AND TO HOLD UNTO said Lessee on the following terms and conditions:

#### **TERM**

1. The term of this lease shall be three (3) years, beginning on the 15th day of March, 1971 and ending on the 14th day of March, 1974, except as otherwise hereinafter provided.

#### **RENTAL**

2. Lessee shall pay to Lessor as rental the sum of ONE THOUSAND ONE HUNDRED AND FIFTY DOLLARS AND NO/100 DOLLARS (\$1,150.00) per month, payable monthly in advance beginning March 15, 1971.

#### **TERMINATION**

3. Lessee may terminate this lease at any time if

**Page 2**

it shall have been determined by its Board of Library Commissioners that the public necessity and interest so dictates. Such termination shall not be effective unless and until lessor shall have been provided a written notice thereof at least 90 days prior to the date of proposed termination.

**PURPOSE**

4. Said demised premises shall be used as a Library Materials Depository for the City of Los Angeles, and for no other purpose without having first obtained written consent of Lessor.

**ALTERATIONS**

5. Lessee shall have the right to make such alterations and improvements and install such fixtures and equipment in and on the premises hereby demised as are, in the opinion of Lessee, convenient or necessary to fit said premises for the purpose set forth in this lease. All property of every kind or nature, placed in or on said demised premises by Lessee, shall be deemed personal property of the Lessee, and shall remain the property of Lessee, who shall have the right to remove the same upon termination of this lease, or at any time prior thereto; PROVIDED, however, in the event of such termination Lessee agrees to restore said demised premises to the same safe and good condition prevailing at the inception of this lease, normal wear and tear and action of the elements excepted and, FURTHER PROVIDED, that any and all wires, conduits, or pipe leading to any fixtures may be left in place in said premises at the option of Lessee, provided the same shall be insulated, plugged or otherwise treated in accordance with standard practices and

**Page 3**

ordinances

of the City of Los Angeles.

**UTILITIES**

6. Lessee shall furnish, at Lessee's sole cost and expense, all public utilities for gas, light, power, heat, and air conditioning, and also such janitorial services as are required by Lessee on the demised premises.

**REPAIRS AND MAINTENANCE**

7. Lessee agrees to keep and maintain the interior of said premises safe and in good order and condition at all times during the term hereof; and upon expiration of this lease, or at any sooner termination thereof, the Lessee will quit and surrender possession of said premises quietly and peaceable and in as good order and condition as the same were at the commencement hereof, reasonable wear, tear and damage by the elements excepted. Lessor shall maintain the exterior walls and roof of said structure.

**DAMAGE TO STRUCTURE**

8. Should the demised premises be substantially damaged or destroyed in whole or in part by fire, earthquake or other sudden violent action of the elements or other casualty at any time during the term of this lease so that the same cannot be repaired within 90 working days, Lessor at its option, at any time within thirty (30) days after the happening of such casualty, may terminate this Lease as of the date of the happening of such casualty.

In the event of any termination as herein provided, Lessee shall forthwith surrender the demised premises to Lessor, and upon such surrender Lessor shall

**Page 4**

refund to Lessee any unearned rent paid by Lessee, calculated at a daily rate based on the then effective regular monthly rate. In the event of any damage or destruction as aforesaid, and if this lease be not terminated by the Lessor as herein provided, Lessor shall proceed with reasonable diligence to restore the demised premises to substantially the condition in which they were immediately prior to the happening of the casual-

ty, this lease continuing in full force and effect, and Lessee shall be entitled to a reasonable suspension or diminution of the rental hereunder commencing from the date of the casualty and during the time required for restoration.

#### INDEMNITY

9. Lessee agrees to hold Lessor harmless from any and all damages, or claims for damages, sustained by any person in said demised premises, which result from the negligence of Lessee in the use and occupancy of said premises.

#### DEFAULT

10. If default shall be made in any of the covenants herein agreed to be kept or performed by Lessee, this lease may be terminated by Lessor and said Lessor may enter upon the premises and remove all persons and property therefrom; provided, however, that any delay in payment of rental due to delay in accounting, financial or budgetary procedures by the Lessee shall not be deemed a default unless such delay shall continue four (4) months or more from the dates of payment herein specified.

#### HOLDING OVER

11. In the event that Lessee shall hold over and remain in possession of the demised premises after the term

Page 5

hereof or any extension period hereunder with the implied or expressed consent of Lessor, such holding over shall be deemed to be from month to month only, and upon all of the same terms, covenants and conditions as contained herein.

#### TAXES

12. Lessor shall pay all taxes or assessments levied

upon real property herein demised, but shall not be liable for any taxes or assessments levied against the personal property or fixtures of the Lessee.

#### NOTICES

13. Any notices which are required hereunder, or which either Lessor or Lessee may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage prepaid, registered, return receipt requested, addressed to Lessor at 7250 Franklin Avenue, Apt. 517, Hollywood, California 90040; or addressed to Lessee at 200 North Spring Street, Los Angeles, California 90012; Attention: Director, Bureau of Right of Way and Land.

#### MARGINAL TITLES

14. The marginal titles contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this lease.

#### WAIVER

15. Waiver by Lessor of any default in performance by Lessee of any of the terms, covenants or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

#### SUCCESSION

16. Each and all of the provisions hereof shall  
Page 6

inure to

the benefit of and also bind the successors and assignees of the respective parties hereto.

IN WITNESS WHEREOF, the City of Los Angeles, a municipal corporation, the Lessee herein, acting by and through its Board of Public Works, has caused this lease to be executed for and on its behalf, and attested by its City Clerk; and Helen Ball, a widow, has executed the same as of the day and year first hereinabove written.

APPROVED:  
LIBRARY DEPARTMENT

By \_\_\_\_\_

---

LESSOR  
HELEN BALL

---

LESEE  
CITY OF LOS ANGELES, a municipal  
corporation  
BOARD OF PUBLIC WORKS

By \_\_\_\_\_

By \_\_\_\_\_

ATTEST:  
REX E. LAYTON, City Clerk

Service of the within and receipt of a copy thereof  
is hereby admitted this \_\_\_\_\_ day of  
November, A.D. 1978.

APPROVED AS TO TERMS AND CONDITIONS:

---

ROBERT A. MC RAE, Director  
BUREAU OF RIGHT OF WAY & LAND  
APPROVED AS TO FORM:  
ROGER ARNEBERGH, City Attorney

---

APPROVED:

---

M.S. LEVIN, Director  
BUREAU OF PUBLIC BUILDINGS

Supreme Court, U.S.  
FILED  
DEC 20 1978

**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

MICHAEL PODAK, JR., CLERK

October Term, 1978

No. 78-827

HELEN BALL,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

---

ON PETITION FOR  
A WRIT OF CERTIORARI  
TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

---

**MEMORANDUM OPPOSING CERTIORARI**

**JOHN H. LARSON**  
County counsel

**GERALD F. CRUMP**  
Chief, Public Works Division

**CHARLES J. MOORE**  
Deputy County Counsel

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500 West Temple Street  
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(213) 974-1845

Attorneys for Respondent

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TOPICAL INDEX

Page

MEMORANDUM OPPOSING  
CERTIORARI

1

TABLE OF AUTHORITIES

Cases

Kahn v. Shevin,  
(1974) 416 U.S. 351,  
94 S.Ct. 1734,  
40 L.Ed.2d 189

3

Statutes

Revenue and Taxation Code:

|                       |      |
|-----------------------|------|
| Section 5103 (former) | 2    |
| Section 5104 (former) | 2    |
| Section 5105          | 1    |
| Section 5108          | 1    |
| Section 5140          | 2    |
| Section 5141          | 1, 2 |

i.

Revenue and Taxation Code:

|              |   |
|--------------|---|
| Section 5142 | 2 |
| Section 5150 | 2 |
| Section 5151 | 2 |

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MEMORANDUM OPPOSING CERTIORARI

---

The single federal question raised in the petition may be phrased in the following manner:

Does a state's legislative plan which authorizes recovery of interest on a tax refund only where the county has failed to grant a refund claim deny equal protection of the law to a taxpayer whose refund claim is granted by the county?

Former Sections 5105, 5108 and 5141 of the Revenue and Taxation Code authorized recovery of interest on a tax refund only where the county with notice of an improper assessment thereafter failed to grant a tax refund. These sections were

repealed, but largely reenacted in Sections 5150 and 5151 of the Code. Notice may be given by refund claim, application for equalization, or payment under protest. It is reasonable to deny interest unless and until the county receives notice and fails to correct a tax error.

A tax refund claim must be presented to and denied by the county before a court action may be legally commenced. Sections 5140, 5141, 5142, and former Sections 5103 and 5104 of the Revenue and Taxation Code.

There can be no doubt that making a successful claim to the county for a tax refund is more efficient and less expensive than litigating a complaint for the recovery of taxes.

It may reasonably have been the purpose and policy of the California Legislature, in creating governmental liability for interest on tax refunds only if they are obtained by court order, to encourage the prompt administrative settlement of tax disputes.

The general principles applicable to the determination of an equal protection challenge to state tax legislation were recently summarized as follows:

"We have long held that '[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce

reasonable systems of taxation.'  
[Citation]. A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. [Citation]. This principle was weathered nearly a century of Supreme Court adjudications. . . ." Kahn v. Shevin (1974) 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed. 2d 189.

For these reasons, it cannot be said, in light of the settled law, that the tax provisions are invidious or arbitrary and deny petitioner the equal protection of the law.

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN H. LARSON  
County Counsel

GERALD F. CRUMP,  
Chief, Public Works Division

CHARLES J. MOORE,  
Deputy County Counsel

Attorneys for Respondent